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FOR: Any person who uses the Federal Register and Code of Federal Regulations.

WHO: Sponsored by the Office of the Federal Register.

WHAT: Free public briefings (approximately 3 hours) to present:

1. The regulatory process, with a focus on the Federal Register system and the public's role in the development of regulations.

2. The relationship between the Federal Register and Code of Federal Regulations.

3. The important elements of typical Federal Register documents.

4. An introduction to the finding aids of the FR/CFR system.

WHY: To provide the public with access to information necessary to research Federal agency regulations which directly affect them. There will be no discussion of specific agency regulations.

WHEN: Tuesday, August 8, 2006
9:00 a.m.–Noon

WHERE: Office of the Federal Register
Conference Room, Suite 700
800 North Capitol Street, NW.
Washington, DC 20002

RESERVATIONS: (202) 741–6008

Contents

Federal Register

Vol. 71, No. 142

Tuesday, July 25, 2006

Separate Parts In This Issue

Reader Aids

Consult the Reader Aids section at the end of this issue for phone numbers, online resources, finding aids, reminders, and notice of recently enacted public laws.

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CFR PARTS AFFECTED IN THIS ISSUE

A cumulative list of the parts affected this month can be found in the Reader Aids section at the end of this issue.

Rules and Regulations

Federal Register
Vol. 71, No. 142
Tuesday, July 25, 2006

DEPARTMENT OF AGRICULTURE

Commodity Credit Corporation

7 CFR Part 1423

RIN 0560–AE50

Standards for Approval of Warehouses for Storage of CCC Commodities

AGENCY: Commodity Credit Corporation, USDA.

ACTION: Final rule; correction.

SUMMARY: This document corrects the final rule published on June 22, 2006, amending the regulations covering the storage of commodities owned by the Commodity Credit Corporation (CCC). A correction is needed because the amended rule contains an incorrect reference to a regulatory provision.

DATES: Effective Date: June 22, 2006.

FOR FURTHER INFORMATION CONTACT: Phillip Elder, Regulatory Review Group, Economic and Policy Analysis Staff, Farm Service Agency (FSA), United States Department of Agriculture (USDA), Stop 0572, 1400 Independence Ave., SW., Washington, DC 20250–0572. Telephone: (202) 690–8104; e-mail: *Phillip.Elder@wdc.usda.gov*. Persons with disabilities who require alternative means for communication (Braille, large print, audio tape, etc.) should contact the USDA Target Center at (202) 720–2600 (voice and TDD).

SUPPLEMENTARY INFORMATION:

Background

This rule corrects the final rule published in the **Federal Register** on June 22, 2006 (71 FR 35771) that amended regulations covering the storage of commodities owned by the Commodity Credit Corporation (CCC). Section 1423.8 (b) of the final rule inadvertently contained a reference to section 1423.4(c)(5), which does not exist. This document removes that reference.

List of Subjects in 7 CFR Part 1423

Agricultural commodities, Approval of warehouses, Dairy products, Feed grains, Oilseeds, Price support programs, Processed commodities, Surplus agricultural commodities.

■ For this reason, 7 CFR part 1423 is amended as follows:

PART 1423—COMMODITY CREDIT CORPORATION APPROVED WAREHOUSES

■ 1. The authority citation for part 1423 continues to read as follows:

Authority: 15 U.S.C. 714b and 714c.

■ 2. Amend § 1423.8 (b) by revising the third sentence to read as follows:

§ 1423.8 Approval or rejection.

* * * * *

(b) * * * CCC will reconsider a warehouse for approval when the warehouse operator establishes that the reasons for rejection have been remedied or requests reconsideration of the action and presents to the Director, KCCO, in writing, information in support of such request.

* * * * *

Signed in Washington, DC, on July 17, 2006.

Teresa C. Lasseter,

Executive Vice President, Commodity Credit Corporation.

[FR Doc. E6–11762 Filed 7–24–06; 8:45 am]

BILLING CODE 3410–05–P

DEPARTMENT OF THE TREASURY

Office of the Comptroller of the Currency

12 CFR Part 8

[Docket No. 06–08]

RIN 1557–AC96

Assessment of Fees

AGENCY: Office of the Comptroller of the Currency, Treasury.

ACTION: Final rule.

SUMMARY: The Office of the Comptroller of the Currency (OCC) is adopting in final form, without change, an interim final rule that amended our regulations at 12 CFR part 8 concerning the timing of payments of OCC assessments. The interim rule replaced the process used to determine the amount of assessment due to the OCC. Previously, national banks were required to make the initial calculation of the amount due to the OCC. Under the interim rule, the OCC, rather than each national bank, calculates the semiannual assessment based on the most recent Consolidated Reports of Condition and Income (Call Report). The assessment is due by March 31 and September 30 of each year, two months later than under the previous process. Thus, payments that would have been due on January 31 of each year are instead due on March 31, and payments that would have been due on July 31 are due on September 30 of each year. The OCC will notify each national bank of the amount of its semiannual assessment and automatically deduct that amount from each bank's designated account on the payment due date. The interim rule changed the assessment collection process only; it did not make any changes to the method for calculating assessments due from national banks.

DATES: *Effective Date:* This rule is adopted as final, effective August 24, 2006.

FOR FURTHER INFORMATION CONTACT: Jean Campbell, Senior Attorney, or Mitchell Plave, Counsel, Legislative and Regulatory Activities Division, (202) 874–5090; or Colette Baylson, Accounting Operations Manager, Financial Management, (202) 874–4403, Office of the Comptroller of the Currency, 250 E Street, SW., Washington, DC 20219.

SUPPLEMENTARY INFORMATION:

I. Background

The National Bank Act authorizes the OCC to collect assessments, fees, or other charges as necessary or appropriate to carry out its responsibilities. 12 U.S.C. 482. Under this authority, the OCC collects semiannual assessments from national banks, as described in 12 CFR part 8 and in the Notice of Comptroller of the Currency Fees, which is published no later than the first business day of December each year.[1] Prior to adoption of the interim final rule on November 17, 2005, 70 FR 69641, part 8 required

[1] Under part 8, the OCC also collects assessments from Federal branches and Federal agencies. The changes provided for in this final rule will also apply to payment of assessments by Federal branches and Federal agencies.

each national bank to compute the amount of its semiannual assessment and pay that amount to the OCC by January 31 and July 31 of each year. Banks based their assessments on the data each bank submitted in its most recent Call Report.

Under the procedure in effect prior to November 17, 2005, the OCC reviewed each assessment computation after receiving Call Report data from the Federal Deposit Insurance Corporation (FDIC) in March and September of each year. When the OCC found an overpayment or underpayment of a semiannual assessment, we contacted the national bank, explained the error, and refunded (or collected, as the case may be) the funds electronically. This assessment collection process was cumbersome and outdated, and the procedure for reviewing and correcting miscalculations was inefficient. For these reasons the OCC revised the assessment process as described below.

II. The Interim and Final Rules

On November 17, 2005, the OCC published and requested comment on an interim rule amending 12 CFR part 8. The comment period ended on December 17, 2005, and no comments were received. Accordingly, the OCC is adopting the interim rule as a final rule with no modifications.

Calculation of the Semiannual Assessment Fee

The final rule provides that the OCC will calculate the semiannual assessment due from each bank based on the most recent Call Report data. Under the new assessment process, the OCC will send each national bank an assessment collection notification no later than 7 business days prior to March 31 and September 30 of each year. The assessment covers the six-month period beginning on January 1 and July 1 before each payment date. The OCC will automatically deduct the assessed amount from the bank's designated account on March 31 and September 30. By delaying the assessment calculation date by two months, the OCC will collect assessments based on final Call Report data, and thus eliminate the cumbersome correction process that we previously used. Under the final rule, a national bank can notify the OCC of any errors in the calculation of semiannual assessments or errors in the electronic transfer process, and the Comptroller is required to respond to such notices within 30 days of receipt.

This streamlining of the OCC's assessment collection process reduces regulatory burden for national banks and is therefore consistent with the objectives of section 2222 of the Economic Growth and Regulatory Paperwork Reduction Act of 1996,[2] which calls for the periodic review of the OCC's regulations and the elimination of unnecessary burden.

Technical and Conforming Amendments

The final rule eliminates an erroneous sentence in § 8.7(a) regarding delinquent semiannual assessment payments. The final rule also makes conforming changes to § 8.7(b) to describe the new streamlined procedure to correct errors in the assessment process. The final rule makes non-substantive changes to conform part 8 to the new assessment collection process and other minor technical changes. Finally, in § 8.6(a)(1), (2), and (4), and § 8.7(a), the final rule eliminates references to ''District of Columbia,'' ''District of Columbia banks'' and ''each district bank'' to reflect the provisions of the 2004 District of Columbia Omnibus Authorization Act, section 8, Public Law 108–386, 118 Stat. 2228 (2004), which shifted regulatory responsibility of District of Columbia banks from the OCC to the FDIC and Board of Governors of the Federal Reserve System.

Effective Date

This final rule takes effect 30 days after publication in the **Federal Register**. 5 U.S.C. 553(d). Under 12 U.S.C. 4802(b)(1), Federal banking agency regulations or amendments to regulations ''which impose additional reporting, disclosure, or other requirements on insured depository institutions'' must be effective on the first day of a calendar quarter which begins on or after the date on which the regulations are published in final form. As described above, this final rule imposes no new requirements on national banks. Accordingly, the delayed effective date requirement in section 4802(b)(1) does not apply to this final rule.

Regulatory Flexibility Act Analysis

The Regulatory Flexibility Act (Pub. L. 96–354, Sept. 19, 1980) (RFA) applies only to rules for which an agency publishes a general notice of proposed rulemaking (NPRM) pursuant to 5 U.S.C. 553(b).[3] Because the OCC did not publish an NPRM, the RFA does not apply to this final rule. In any case, however, the final rule affects only the process for calculating the semiannual assessment and the timing of required payment. It does not affect the amount of assessment a bank must pay.

Executive Order 12866

The OCC has determined that this final rule is not a significant regulatory action under Executive Order 12866.

Unfunded Mandates Reform Act of 1995 Determinations

Section 202 of the Unfunded Mandates Reform Act of 1995 [4] (Unfunded Mandates Act) requires that an agency prepare a budgetary impact statement before promulgating any rule likely to result in a Federal mandate that may result in the expenditure by state, local, and tribal governments, in the aggregate, or by the private sector, of $100 million or more in any one year. If a budgetary impact statement is required, section 205 of the Unfunded Mandates Act also requires the agency to identify and consider a reasonable number of regulatory alternatives before promulgating the rule. The OCC has determined that this final rule will not result in expenditures by state, local, and tribal governments, in the aggregate, or by the private sector, of $100 million or more in any one year. Accordingly, the OCC has not prepared a budgetary impact statement or specifically addressed any regulatory alternatives.

Paperwork Reduction Act

In accordance with the Paperwork Reduction Act of 1995 (44 U.S.C. Ch. 3506; 5 CFR 1320 Appendix A.1), we have reviewed the final rule to determine whether it contains any information collections. There are no collections of information as defined by the Paperwork Reduction Act in the final rule.

Lists of Subjects in 12 CFR Part 8

Assessment of fees.

PART 8—ASSESSMENT OF FEES

■ Accordingly, the interim final rule amending 12 CFR part 8 which was published at 70 FR 69641 on November 17, 2005, is adopted as a final rule without change.

Dated: July 18, 2006.

John C. Dugan,

Comptroller of the Currency.

[FR Doc. E6–11804 Filed 7–24–06; 8:45 am]

BILLING CODE 4810–33–P

[2] Pub. L. 104–208, § 2222, 110 Stat. 3009–414 to 3009–415 (Sept. 30, 1996).

[3] 5 U.S.C. 601(2).

[4] 2 U.S.C. 1532.

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. FAA–2005–22504; Directorate Identifier 2003–NM–281–AD; Amendment 39–14691; AD 2006–15–11]

RIN 2120–AA64

Airworthiness Directives; Construcciones Aeronauticas, S.A. (CASA), Model C–212–CC Airplanes

AGENCY: Federal Aviation Administration (FAA), Department of Transportation (DOT).

ACTION: Final rule.

SUMMARY: The FAA is adopting a new airworthiness directive (AD) for certain CASA Model C–212–CC airplanes. This AD restricts the operation of the airplane to carrying either passengers or cargo (but not both) in the same compartment, unless the airplane is modified to include an approved protective liner between the passengers and the cargo. This AD results from our determination that affected airplanes, when carrying both cargo and passengers in the same compartment, cannot achieve the required level of performance. We are issuing this AD to prevent a hazardous quantity of smoke, flames, and/or fire extinguishing agent from the cargo compartment from entering a compartment occupied by passengers or crew.

DATES: This AD becomes effective August 29, 2006.

ADDRESSES: You may examine the AD docket on the Internet at *http://dms.dot.gov* or in person at the Docket Management Facility, U.S. Department of Transportation, 400 Seventh Street, SW., Nassif Building, Room PL–401, Washington, DC.

FOR FURTHER INFORMATION CONTACT: Della Swartz, Aerospace Engineer, ACE–115N, FAA, Anchorage Aircraft Certification Office, 222 West 7th Avenue, Unit 14, Room 128, Anchorage, Alaska 99513; telephone (907) 271–2672; fax (907) 271–6365.

SUPPLEMENTARY INFORMATION:

Examining the Docket

You may examine the airworthiness directive (AD) docket on the Internet at *http://dms.dot.gov* or in person at the Docket Management Facility office between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays. The Docket Management Facility office (telephone (800) 647–5227) is located on the plaza level of the Nassif Building at the street address stated in the **ADDRESSES** section.

Discussion

The FAA issued a notice of proposed rulemaking (NPRM) to amend 14 CFR part 39 to include an AD that would apply to certain CASA Model C–212–CC series airplanes. That NPRM was published in the **Federal Register** on September 22, 2005 (70 FR 55604). That NPRM proposed to restrict the operation of the airplane to carrying either passengers or cargo (but not both) in the same compartment, unless the airplane is modified to include an approved protective liner between the passengers and the cargo.

Comments

We provided the public the opportunity to participate in the development of this AD. We have considered the comments received.

Request for Conformance to Technical Standard Order (TSO)

The Modification and Repair Parts Association (MARPA) recommends that we place additional requirements on the type of smoke detectors that could be used for this application (*i.e.*, that they must fully meet all requirements of the associated technical standard order (TSO)). In addition, the MARPA feels that 14 CFR part 39 does not permit the modification of other parts of the CFR, such as 21.303, for economic or other seemingly quixotic rationale. The MARPA concludes that it would appear we do not possess the legal authority in part 39 to waive other requirements of the CFR for reasons that do not contribute to continued airworthiness.

We considered the comments, but for the reasons below do not concur.

The use of appliances that are not ''FAA-approved'' is not without precedent. Handheld fire extinguishers, for example, are not specifically approved by the FAA. We also permit smoke detectors that do not meet TSO requirements to be used in lavatories on commercial airplanes because the presence of flight attendants and passengers makes it unlikely that a fire could transition from a small smoldering fire to a flaming fire without notice.

Regarding Model C–212–CC series airplanes, the presence of two smoke detectors that do not meet TSO requirements, the close proximity of the cargo to passengers, and flammability test data for fire containment covers led us to conclude that there was no need to require smoke detectors that fully meet TSO requirements in this application. It should be noted that these detectors are placed on the cargo; the cargo and detectors are then placed within fire containment covers, which must completely surround the cargo and detectors. Two detectors are required for each enclosed cargo to be carried on the airplane. We have determined that this provides an acceptable level of safety.

Regarding 14 CFR 21.303, the MARPA apparently misunderstands the requirements of § 21.303. This section regulates production of parts, and requires FAA parts manufacturer approval (PMA) for persons who produce parts ''for sale for installation on type certificated products.'' ADs, on the other hand, impose requirements on operators and do not affect requirements for parts production. In this case, the phrase, ''building-type smoke detectors'' refers to parts that are presumably not produced for sale for installation on a type-certificated product; i.e., they are produced for use in buildings. Therefore, this AD neither modifies nor conflicts with § 21.303. Regarding the FAA's authority under part 39, § 39.5 identifies the criteria for issuing ADs: ''* * * an unsafe condition exists in a product and it is likely to exist or develop in other products of the same type design.'' Those criteria are clearly met in this case. Nothing in part 39 limits the actions that we may require to address the unsafe condition. In fact, § 39.11 provides us with maximum flexibility in defining necessary corrective actions: ''Airworthiness directives specify inspections you must carry out, conditions and limitations you must comply with, and any actions you must take to resolve the unsafe condition.'' This certainly includes installation of smoke detectors that we have determined to adequately fulfill the safety needs in the unusual circumstances of this AD.

Clarification of Alternative Method of Compliance (AMOC) Paragraph

We have revised this action to clarify the appropriate procedure for notifying the principal inspector before using any approved AMOC on any airplane to which the AMOC applies.

Explanation of Change to Applicability

We have revised the applicability of the proposed AD to identify model designations as published in the most recent type certificate data sheet for the affected models.

Conclusion

We have carefully reviewed the available data, including the comments received, and determined that air safety and the public interest require adopting the AD with the changes described

previously. We have determined that the changes will neither increase the economic burden on any operator nor increase the scope of the AD.

Exemption Granted

On May 16, 2003, an operator of certain CASA Model C–212–CC and –CD airplanes (not affected by this AD) in Alaska was granted Exemption 7779A to provide an acceptable level of fire protection that will allow those airplanes to be operated in the combi configuration. (Documents related to the exemption may be viewed at *http://dms.dot.gov,* under docket number FAA–2001–11150.) The exemption was granted based on public interest, with the following limitations:

1. A means will be provided to extinguish or control a fire without requiring a crewmember to enter the compartment. Fire containment covers (FCCs) of woven fiberglass-based materials that will pass the oil burner test of FAR Part 25, Appendix F, Part II, must be used. FCCs will completely surround all cargo, including being underneath the cargo, except for obviously non-flammable items, such as metal stock, machinery, and non-flammable fluids without flammable packaging. Cargo restraint nets will be installed over the FCCs. A valve will be installed in the FCCs to allow fire-fighting attempts without removing or loosening the FCCs.

2. A means will be provided to exclude hazardous quantities of smoke, flames, or extinguishing agent from any compartment occupied by the crew or passengers. There is an approved procedure for elimination of smoke and fumes in the airplane flight manual (AFM).

3. A separate approved smoke detector or fire detector system will be installed in the cargo area and a fire/smoke warning indicator will be provided in the cockpit. Smoke or fire detectors placed within each FCC fully enclosed volume provide such a means. The use of non-TSO'd inexpensive building-type smoke detectors is permitted. Detectors may be wired or wireless, as long as they incorporate provisions for sensor redundancy, testing, and remote cockpit indication. At least two detectors must be placed within each FCC fully enclosed volume.

4. Crew members must receive training in the use of the fire extinguishers and the cargo fire containment covers; they must also receive training in the use of the approved procedure for the elimination of smoke and fumes that is specified in the AFM.

5. Two additional fire extinguishers must be carried on the airplane.

6. Limitations 1 through 5 must be documented as operating limitations in the limitations section of the Airplane Flight Manual Supplement.

We anticipate that adherence to these six terms and conditions, in a method approved by the FAA, would be considered a means of compliance with this AD.

Costs of Compliance

We estimate that 5 airplanes of U.S. registry will be affected by this AD. We recognize that the operational restrictions may impose indirect and adverse economic effects on operators from a potential loss of revenue. Those indirect costs are difficult to calculate because the lost revenue from combi-operated flights is not readily measurable. Nevertheless, because of the severity of the identified unsafe condition, we have determined that continued operational safety necessitates these costs to the operators.

An operator may choose to modify the cargo compartment rather than restrict its operations. However, since a modification commensurate with the requirements of this AD has not been developed, we cannot provide specific information regarding the number of work hours or the cost of parts to accomplish that modification. Further, modification costs would likely vary, depending on the airplane configuration. The compliance time of 12 months should provide ample time for the development, approval, and installation of an appropriate modification, and also ensure the necessary level of flight safety. Based on a similar modification accomplished previously, we can reasonably estimate that the modification may take 40 work hours, at an average labor rate of $65 per work hour. The cost of required parts will be about $1,800 per airplane. A required proof of function flight test will cost about $4,000 including the services of a Designated Engineering Representative, pilot, test airplane, and test equipment. Based on these figures, the cost impact of the AD on U.S. operators is estimated to be $8,400 per airplane.

Authority for This Rulemaking

Title 49 of the United States Code specifies the FAA's authority to issue rules on aviation safety. Subtitle I, Section 106, describes the authority of the FAA Administrator. Subtitle VII, Aviation Programs, describes in more detail the scope of the Agency's authority.

We are issuing this rulemaking under the authority described in Subtitle VII, Part A, Subpart III, Section 44701, ''General requirements.'' Under that section, Congress charges the FAA with promoting safe flight of civil aircraft in air commerce by prescribing regulations for practices, methods, and procedures the Administrator finds necessary for safety in air commerce. This regulation is within the scope of that authority because it addresses an unsafe condition that is likely to exist or develop on products identified in this rulemaking action.

Regulatory Findings

We have determined that this AD will not have federalism implications under Executive Order 13132. This AD will not have a substantial direct effect on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government.

For the reasons discussed above, I certify that this AD:

(1) Is not a ''significant regulatory action'' under Executive Order 12866;

(2) Is not a ''significant rule'' under DOT Regulatory Policies and Procedures (44 FR 11034, February 26, 1979); and

(3) Will not have a significant economic impact, positive or negative, on a substantial number of small entities under the criteria of the Regulatory Flexibility Act.

We prepared a regulatory evaluation of the estimated costs to comply with this AD and placed it in the AD docket. See the **ADDRESSES** section for a location to examine the regulatory evaluation.

List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Safety.

Adoption of the Amendment

■ Accordingly, under the authority delegated to me by the Administrator, the FAA amends 14 CFR part 39 as follows:

PART 39—AIRWORTHINESS DIRECTIVES

■ 1. The authority citation for part 39 continues to read as follows:

Authority: 49 U.S.C. 106(g), 40113, 44701.

§ 39.13 [Amended]

■ 2. The Federal Aviation Administration (FAA) amends § 39.13 by adding the following new airworthiness directive (AD):

2006–15–11 Construcciones Aeronauticas, S.A. (CASA): Amendment 39–14691. Docket No. FAA–2005–22504; Directorate Identifier 2003–NM–281–AD.

Effective Date

(a) This AD becomes effective August 29, 2006.

Affected ADs

(b) None.

Applicability

(c) This AD applies to CASA Model C–212–CC airplanes, certificated in any category, modified in accordance with Supplemental Type Certificate (STC) ST02177AK, or by field approval using STC ST02177AK as a basis for the field approval.

Unsafe Condition

(d) This AD was prompted by our determination that affected airplanes, when carrying both cargo and passengers in the same compartment, cannot achieve the required level of performance. We are issuing this AD to prevent a hazardous quantity of smoke, flames, and/or fire extinguishing agent from the cargo compartment from entering a compartment occupied by passengers or crew.

Compliance

(e) You are responsible for having the actions required by this AD performed within the compliance times specified, unless the actions have already been done.

Modification

(f) As of 12 months after the effective date of this AD, no person may operate an airplane in the combi configuration, unless the actions specified by either paragraph (f)(1) or (f)(2) are done in accordance with a method approved by the Manager, Anchorage Aircraft Certification Office (ACO), FAA.

(1) Modify the airplane to incorporate a protective liner between the passengers and the cargo and to ensure compliance with § 25.855 (''Cargo or baggage compartment'') of the Federal Aviation Regulations (14 CFR 25.855).

(2) Comply with the terms and conditions specified in paragraphs (f)(2)(i) through (f)(2)(vi) of this AD.

(i) There are means to extinguish or control a fire without requiring a crewmember to enter the compartment.

(ii) There are means to exclude hazardous quantities of smoke, flames, or extinguishing agent from any compartment occupied by the crew or passengers.

(iii) There is a separate approved smoke detector or fire detector system to give warning at the pilot or flight engineer station.

(iv) Crew members must receive training in the use of the fire extinguishers and the cargo fire containment covers; they must also receive training in the use of the approved procedure for the elimination of smoke and fumes that is specified in the airplane flight manual (AFM).

(v) Two additional fire extinguishers must be carried on the airplane.

(vi) Limitations (f)(2)(i) through (f)(2)(v) must be documented as operating limitations in the Limitations section of the CASA C–212–CC AFM supplement.

Special Flight Permits

(g) Special flight permits may be issued in accordance with §§ 21.197 and 21.199 of the Federal Aviation Regulations (14 CFR 21.197 and 21.199) to operate the airplane to a location where the airplane can be modified (if the operator elects to do so), provided no passengers are onboard.

Alternative Methods of Compliance (AMOCs)

(h)(1) The Manager, Anchorage ACO, FAA, has the authority to approve AMOCs for this AD, if requested in accordance with the procedures found in 14 CFR 39.19.

(2) Before using any AMOC approved in accordance with 14 CFR 39.19 on any airplane to which the AMOC applies, notify the appropriate principal inspector in the FAA Flight Standards Certificate Holding District Office.

Material Incorporated by Reference

(i) None.

Issued in Renton, Washington, on July 14, 2006.

Ali Bahrami,

Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. E6–11701 Filed 7–24–06; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. FAA–2005–22630; Directorate Identifier 2001–NM–323–AD; Amendment 39–14690; AD 2006–15–10]

RIN 2120–AA64

Airworthiness Directives; Airbus Model A300 B4–600, B4–600R, and F4–600R Series Airplanes, and Model C4–605R Variant F Airplanes (Collectively Called A300–600 Series Airplanes); and Airbus Model A310–200 and –300 Series Airplanes

AGENCY: Federal Aviation Administration (FAA), Department of Transportation (DOT).

ACTION: Final rule.

SUMMARY: The FAA is adopting a new airworthiness directive (AD) for all Airbus Model A300 B4–600, B4–600R, and F4–600R series airplanes, and Model C4–605R Variant F airplanes (collectively called A300–600 series airplanes); and Model A310–200 and –300 series airplanes. This AD requires a one-time inspection of the trimmable horizontal stabilizer actuator (THSA), corrective actions if necessary, and follow-on repetitive tasks. This AD results from reports of THSAs that have reached their design operational life. We are issuing this AD to extend the operational life of the THSA to prevent a possible failure of high-time THSAs, which could result in reduced controllability of the airplane.

DATES: This AD becomes effective August 29, 2006.

The Director of the Federal Register approved the incorporation by reference of certain publications listed in the AD as of August 29, 2006.

ADDRESSES: You may examine the AD docket on the Internet at *http://dms.dot.gov* or in person at the Docket Management Facility, U.S. Department of Transportation, 400 Seventh Street, SW., Nassif Building, Room PL–401, Washington, DC.

Contact Airbus, 1 Rond Point Maurice Bellonte, 31707 Blagnac Cedex, France, for service information identified in this AD.

FOR FURTHER INFORMATION CONTACT: Thomas Stafford, Aerospace Engineer, International Branch, ANM–116, Transport Airplane Directorate, FAA, 1601 Lind Avenue, SW., Renton, Washington 98057–3356; telephone (425) 227–1622; fax (425) 227–1149.

SUPPLEMENTARY INFORMATION:

Examining the Docket

You may examine the AD docket on the Internet at *http://dms.dot.gov* or in person at the Docket Management Facility office between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays. The Docket Management Facility office (telephone (800) 647–5227) is located on the plaza level of the Nassif Building at the street address stated in the **ADDRESSES** section.

Discussion

The FAA issued a supplemental notice of proposed rulemaking (NPRM) to amend 14 CFR part 39 to include an AD that would apply to all Airbus Model A300 B4–600, B4–600R, and F4–600R series airplanes, and Model C4–605R Variant F airplanes (collectively called A300–600 series airplanes); and Model A310–200 and –300 series airplanes. That supplemental NPRM was published in the **Federal Register** on May 18, 2006 (71 FR 28821). That supplemental NPRM proposed to require a one-time inspection of the trimmable horizontal stabilizer actuator, corrective actions if necessary, and follow-on repetitive tasks.

Comments

We provided the public the opportunity to participate in the development of this AD. No comments have been received on the supplemental NPRM or on the determination of the cost to the public.

Explanation of Change to the Supplemental NPRM

Paragraph (g) of the supplemental NPRM specifies making repairs using a method approved by either the FAA or the Direction Générale de l'Aviation Civile (DGAC) (or its delegated agent). The European Aviation Safety Agency (EASA) has assumed responsibility for the airplane model[s] subject to this AD. Therefore, we have revised paragraph (g) of this AD to specify making repairs using a method approved by either the FAA or the EASA (or its delegated agent).

Conclusion

We have carefully reviewed the available data and determined that air safety and the public interest require adopting the AD with the change described previously. We have determined that this change will neither increase the economic burden on any operator nor increase the scope of the AD.

Costs of Compliance

The following table provides the estimated costs for U.S. operators to comply with this AD.

ESTIMATED COSTS

Action	Work hours	Average labor rate per hour	Parts	Cost per airplane	Number of U.S.-reg. airplanes	Fleet cost
Inspection	3	$80	None required	$240	146	$35,040.
Repetitive follow-on tasks	12	80	$0	$960, per inspection cycle	146	$140,160, per inspection cycle.

Authority for This Rulemaking

Title 49 of the United States Code specifies the FAA's authority to issue rules on aviation safety. Subtitle I, Section 106, describes the authority of the FAA Administrator. Subtitle VII, Aviation Programs, describes in more detail the scope of the Agency's authority.

We are issuing this rulemaking under the authority described in Subtitle VII, Part A, Subpart III, Section 44701, ''General requirements.'' Under that section, Congress charges the FAA with promoting safe flight of civil aircraft in air commerce by prescribing regulations for practices, methods, and procedures the Administrator finds necessary for safety in air commerce. This regulation is within the scope of that authority because it addresses an unsafe condition that is likely to exist or develop on products identified in this rulemaking action.

Regulatory Findings

We have determined that this AD will not have federalism implications under Executive Order 13132. This AD will not have a substantial direct effect on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government.

For the reasons discussed above, I certify that this AD:

(1) Is not a ''significant regulatory action'' under Executive Order 12866;

(2) Is not a ''significant rule'' under DOT Regulatory Policies and Procedures (44 FR 11034, February 26, 1979); and

(3) Will not have a significant economic impact, positive or negative, on a substantial number of small entities under the criteria of the Regulatory Flexibility Act.

We prepared a regulatory evaluation of the estimated costs to comply with this AD and placed it in the AD docket. See the **ADDRESSES** section for a location to examine the regulatory evaluation.

List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Incorporation by reference, Safety.

Adoption of the Amendment

■ Accordingly, under the authority delegated to me by the Administrator, the FAA amends 14 CFR part 39 as follows:

PART 39—AIRWORTHINESS DIRECTIVES

■ 1. The authority citation for part 39 continues to read as follows:

Authority: 49 U.S.C. 106(g), 40113, 44701.

§ 39.13 [Amended]

■ 2. The Federal Aviation Administration (FAA) amends § 39.13 by adding the following new airworthiness directive (AD):

2006–15–10 Airbus: Amendment 39–14690. Docket No. FAA–2005–22630; Directorate Identifier 2001–NM–323–AD.

Effective Date

(a) This AD becomes effective August 29, 2006.

Affected ADs

(b) None.

Applicability

(c) This AD applies to all of the following Airbus airplanes, certificated in any category:

Model A300 B4–601, B4–603, B4–620, and B4–622 airplanes
Model A300 B4–605R and B4–622R airplanes
Model A300 F4–605R and F4–622R airplanes
Model A300 C4–605R Variant F airplanes
Model A310–203, –204, –221, and –222 airplanes
Model A310–304, –322, –324, and –325 airplanes

Unsafe Condition

(d) This AD results from reports of trimmable horizontal stabilizer actuators (THSAs) that have reached their design operational life. We are issuing this AD to extend the operational life of the THSA to prevent a possible failure of high-time units, which could result in reduced controllability of the airplane.

Compliance

(e) You are responsible for having the actions required by this AD performed within the compliance times specified, unless the actions have already been done.

Service Bulletin References

(f) Unless otherwise specified in this AD, the term ''service bulletin,'' as used in this AD, means the applicable required service bulletin identified in Table 1 of this AD. The service bulletins refer to Goodrich Actuation Systems Service Bulletin 47142–27–11, Revision 3, dated April 25, 2005, as an additional source of service information for the required actions.

TABLE 1.—SERVICE BULLETINS

Required Airbus Service Bulletin	Approved Airbus service bulletin version for actions done before the effective date of this AD	Airbus airplane model
A300–27–6044, Revision 04, dated September 10, 2001.	A300–27–6044, Revision 02, dated August 26, 2000; or Revision 03, dated June 28, 2001.	A300 B4–601, B4–603, B4–620, and B4–622. A300 B4–605R and B4–622R. A300 F4–605R and F4–622R. A300 C4–605R Variant F.
A310–27–2089, Revision 02, dated June 28, 2001.	A310–27–2089, Revision 01, dated August 25, 2000	A310–203, –204, –221, and –222. A310–304, –322, –324, and –325.

Inspection

(g) At the applicable time specified in paragraph (g)(1) or (g)(2) of this AD, do a detailed inspection of specified components of the THSA in accordance with paragraph 1.E.(2)(a) and the Accomplishment Instructions of the applicable service bulletin. Repair any discrepancy before further flight in accordance with a method approved by the Manager, International Branch, ANM–116, Transport Airplane Directorate, FAA; or the European Aviation Safety Agency (EASA) (or its delegated agent). TRW Aeronautical Systems/Lucas Aerospace Component Maintenance Manual 27–44–13, dated September 14, 2001, is one acceptable method for the repair.

(1) If the flight hours accumulated on the THSA can be positively determined: Inspect at the earlier of:

(i) Before the accumulation of 47,000 total flight hours on the THSA, or within 600 flight hours after the effective date of this AD, whichever occurs later.

(ii) Within 25 years since the THSA was new or within 600 flight hours after the effective date of this AD, whichever occurs later.

(2) If the flight hours accumulated on the THSA cannot be positively determined: Inspect before the accumulation of 47,000 total flight hours on the airplane, or within 600 flight hours after the effective date of this AD, whichever occurs later.

Note 1: For the purposes of this AD, a detailed inspection is: ''An intensive examination of a specific item, installation, or assembly to detect damage, failure, or irregularity. Available lighting is normally supplemented with a direct source of good lighting at an intensity deemed appropriate. Inspection aids such as mirror, magnifying lenses, etc., may be necessary. Surface cleaning and elaborate procedures may be required.''

Follow-on Repetitive Tasks

(h) After the inspection required by paragraph (g) of this AD: Do the repetitive tasks in accordance with the Accomplishment Instructions and at the times specified in paragraph 1.E.(2)(b) of the service bulletin, as applicable, except as provided by paragraph (i) of this AD. The repetitive tasks are valid only until the THSA operational life exceeds 65,000 flight hours, 40,000 flight cycles, or 25 years, whichever occurs first. Before the THSA is operated beyond these extended life goals, it must be replaced with a new THSA, except as required by paragraph (i) of this AD.

THSA Replacement

(i) For any THSA, whether discrepant or not, that is replaced with a new THSA: Within 47,000 flight hours or 25 years, whichever occurs first, after the THSA is replaced, do the applicable tasks specified in paragraph 1.E.(2)(a) and the Accomplishment Instructions of the applicable service bulletin. Thereafter repeat the tasks within the repetitive intervals specified in paragraph 1.E.(2)(b) of the applicable service bulletin.

Alternative Methods of Compliance (AMOCs)

(j)(1) The Manager, International Branch, ANM–116, has the authority to approve AMOCs for this AD, if requested in accordance with the procedures found in 14 CFR 39.19.

(2) Before using any AMOC approved in accordance with 14 CFR 39.19 on any airplane to which the AMOC applies, notify the appropriate principal inspector in the FAA Flight Standards Certificate Holding District Office.

Related Information

(k) French airworthiness directive 2001–242(B), dated June 27, 2001, also addresses the subject of this AD.

Material Incorporated by Reference

(l) You must use Airbus Service Bulletin A300–27–6044, Revision 04, dated September 10, 2001; and Airbus Service Bulletin A310–27–2089, Revision 02, dated June 28, 2001; as applicable, to perform the actions that are required by this AD, unless the AD specifies otherwise. The Director of the Federal Register approved the incorporation by reference of these documents in accordance with 5 U.S.C. 552(a) and 1 CFR part 51. Contact Airbus, 1 Rond Point Maurice Bellonte, 31707 Blagnac Cedex, France, for a copy of this service information. You may review copies at the Docket Management Facility, U.S. Department of Transportation, 400 Seventh Street, SW., Room PL–401, Nassif Building, Washington, DC; on the Internet at *http://dms.dot.gov*; or at the National Archives and Records Administration (NARA). For information on the availability of this material at the NARA, call (202) 741–6030, or go to *http://www.archives.gov/federal_register/code_of_federal_regulations/ibr_locations.html*.

Issued in Renton, Washington, on July 14, 2006.

Ali Bahrami,

Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. E6–11700 Filed 7–24–06; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. FAA–2005–22505; Directorate Identifier 2003–NM–283–AD; Amendment 39–14692; AD 2006–15–12]

RIN 2120–AA64

Airworthiness Directives; Construcciones Aeronauticas, S.A. (CASA), Model C–212–CC Airplanes

AGENCY: Federal Aviation Administration (FAA), Department of Transportation (DOT).

ACTION: Final rule.

SUMMARY: The FAA is adopting a new airworthiness directive (AD) for certain CASA Model C–212–CC airplanes. This AD restricts the operation of the airplane to carrying either passengers or cargo (but not both) in the same compartment, unless the airplane is modified to include an approved protective liner between the passengers and the cargo. This AD results from our determination that affected airplanes, when carrying both cargo and passengers in the same compartment, cannot achieve the required level of performance. We are issuing this AD to prevent a hazardous quantity of smoke, flames, and/or fire extinguishing agent from the cargo compartment from entering a compartment occupied by passengers or crew.

DATES: This AD becomes effective August 29, 2006.

ADDRESSES: You may examine the AD docket on the Internet at *http://dms.dot.gov* or in person at the Docket Management Facility, U.S. Department of Transportation, 400 Seventh Street,

SW., Nassif Building, Room PL–401, Washington, DC.

FOR FURTHER INFORMATION CONTACT: Della Swartz, Aerospace Engineer, ACE–115N, FAA, Anchorage Aircraft Certification Office, 222 West 7th Avenue, Unit 14, Room 128, Anchorage, Alaska 99513; telephone (907) 271–2672; fax (907) 271–6365.

SUPPLEMENTARY INFORMATION:

Examining the Docket

You may examine the airworthiness directive (AD) docket on the Internet at *http://dms.dot.gov* or in person at the Docket Management Facility office between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays. The Docket Management Facility office (telephone (800) 647–5227) is located on the plaza level of the Nassif Building at the street address stated in the **ADDRESSES** section.

Discussion

The FAA issued a notice of proposed rulemaking (NPRM) to amend 14 CFR part 39 to include an AD that would apply to certain CASA Model C–212–CC series airplanes. That NPRM was published in the **Federal Register** on September 22, 2005 (70 FR 55602). That NPRM proposed to restrict the operation of the airplane to carrying either passengers or cargo (but not both) in the same compartment, unless the airplane is modified to include an approved protective liner between the passengers and the cargo.

Comments

We provided the public the opportunity to participate in the development of this AD. We have considered the comments received.

Request for Conformance to Technical Standard Order (TSO)

The Modification and Repair Parts Association (MARPA) recommends that we place additional requirements on the type of smoke detectors that could be used for this application (i.e., that they must fully meet all requirements of the associated technical standard order (TSO)). In addition, the MARPA feels that 14 CFR 39 does not permit the modification of other parts of the CFR, such as 21.303, for economic or other seemingly quixotic rationale. The MARPA concludes that it would appear we do not possess the legal authority in Part 39 to waive other requirements of the CFR for reasons that do not contribute to continued airworthiness.

We considered the comments, but for the reasons below do not concur.

The use of appliances that are not ''FAA-approved'' is not without precedent. Handheld fire extinguishers, for example, are not specifically approved by the FAA. We also permit smoke detectors that do not meet TSO requirements to be used in lavatories on commercial airplanes because the presence of flight attendants and passengers makes it unlikely that a fire could transition from a small smoldering fire to a flaming fire without notice.

Regarding Model C–212–CC series airplanes, the presence of two smoke detectors that do not meet TSO requirements, the close proximity of the cargo to passengers, and flammability test data for fire containment covers led us to conclude that there was no need to require smoke detectors that fully meet TSO requirements in this application. It should be noted that these detectors are placed on the cargo; the cargo and detectors are then placed within fire containment covers, which must completely surround the cargo and detectors. Two detectors are required for each enclosed cargo to be carried on the airplane. We have determined that this provides an acceptable level of safety.

Regarding 14 CFR 21.303, the MARPA apparently misunderstands the requirements of § 21.303. This section regulates production of parts, and requires FAA parts manufacturer approval (PMA) for persons who produce parts ''for sale for installation on type certificated products.'' ADs, on the other hand, impose requirements on operators and do not affect requirements for parts production. In this case, the phrase, ''building-type smoke detectors'' refers to parts that are presumably not produced for sale for installation on a type-certificated product; i.e., they are produced for use in buildings. Therefore, this AD neither modifies nor conflicts with § 21.303. Regarding the FAA's authority under part 39, § 39.5 identifies the criteria for issuing ADs: ''* * * an unsafe condition exists in a product and it is likely to exist or develop in other products of the same type design.'' Those criteria are clearly met in this case. Nothing in part 39 limits the actions that we may require to address the unsafe condition. In fact, § 39.11 provides us with maximum flexibility in defining necessary corrective actions: ''Airworthiness directives specify inspections you must carry out, conditions and limitations you must comply with, and any actions you must take to resolve the unsafe condition.'' This certainly includes installation of smoke detectors that we have determined to adequately fulfill the safety needs in the unusual circumstances of this AD.

Clarification of Alternative Method of Compliance (AMOC) Paragraph

We have revised this action to clarify the appropriate procedure for notifying the principal inspector before using any approved AMOC on any airplane to which the AMOC applies.

Explanation of Change to Applicability

We have revised the applicability of the proposed AD to identify model designations as published in the most recent type certificate data sheet for the affected models.

Conclusion

We have carefully reviewed the available data, including the comments received, and determined that air safety and the public interest require adopting the AD with the changes described previously. We have determined that the changes will neither increase the economic burden on any operator nor increase the scope of the AD.

Exemption Granted

On May 16, 2003, an operator of certain CASA Model C–212–CC and –CD airplanes (not affected by this AD) in Alaska was granted Exemption 7779A to provide an acceptable level of fire protection that will allow those airplanes to be operated in the combi configuration. (Documents related to the exemption may be viewed at *http://dms.dot.gov*, under docket number FAA–2001–11150.) The exemption was granted based on public interest, with the following limitations:

1. A means will be provided to extinguish or control a fire without requiring a crewmember to enter the compartment. Fire containment covers (FCCs) of woven fiberglass-based materials that will pass the oil burner test of FAR Part 25, Appendix F, Part II, must be used. FCCs will completely surround all cargo, including being underneath the cargo, except for obviously non-flammable items, such as metal stock, machinery, and non-flammable fluids without flammable packaging. Cargo restraint nets will be installed over the FCCs. A valve will be installed in the FCCs to allow fire-fighting attempts without removing or loosening the FCCs.

2. A means will be provided to exclude hazardous quantities of smoke, flames, or extinguishing agent from any compartment occupied by the crew or passengers. There is an approved procedure for elimination of smoke and fumes in the airplane flight manual (AFM).

3. A separate approved smoke detector or fire detector system will be installed in the cargo area and a fire/

smoke warning indicator will be provided in the cockpit. Smoke or fire detectors placed within each FCC fully enclosed volume provide such a means. The use of non-TSO'd inexpensive building-type smoke detectors is permitted. Detectors may be wired or wireless, as long as they incorporate provisions for sensor redundancy, testing, and remote cockpit indication. At least two detectors must be placed within each FCC fully enclosed volume.

4. Crew members must receive training in the use of the fire extinguishers and the cargo fire containment covers; they must also receive training in the use of the approved procedure for the elimination of smoke and fumes that is specified in the AFM.

5. Two additional fire extinguishers must be carried on the airplane.

6. Limitations 1 through 5 must be documented as operating limitations in the limitations section of the Airplane Flight Manual Supplement.

We anticipate that adherence to these six terms and conditions, in a method approved by the FAA, would be considered a means of compliance with this AD.

Costs of Compliance

We estimate that 5 airplanes of U.S. registry will be affected by this AD. We recognize that the operational restrictions may impose indirect and adverse economic effects on operators from a potential loss of revenue. Those indirect costs are difficult to calculate because the lost revenue from combi-operated flights is not readily measurable. Nevertheless, because of the severity of the identified unsafe condition, we have determined that continued operational safety necessitates these costs to the operators.

An operator may choose to modify the cargo compartment rather than restrict its operations. However, since a modification commensurate with the requirements of this AD has not been developed, we cannot provide specific information regarding the number of work hours or the cost of parts to accomplish that modification. Further, modification costs would likely vary, depending on the airplane configuration. The compliance time of 12 months should provide ample time for the development, approval, and installation of an appropriate modification, and also ensure the necessary level of flight safety. Based on a similar modification accomplished previously, we can reasonably estimate that the modification may take 40 work hours, at an average labor rate of $65 per work hour. The cost of required parts will be about $1,800 per airplane. A required proof of function flight test will cost about $4,000 including the services of a Designated Engineering Representative, pilot, test airplane, and test equipment. Based on these figures, the cost impact of the AD on U.S. operators is estimated to be $8,400 per airplane.

Authority for This Rulemaking

Title 49 of the United States Code specifies the FAA's authority to issue rules on aviation safety. Subtitle I, section 106, describes the authority of the FAA Administrator. Subtitle VII, Aviation Programs, describes in more detail the scope of the Agency's authority.

We are issuing this rulemaking under the authority described in subtitle VII, part A, subpart III, section 44701, ''General requirements.'' Under that section, Congress charges the FAA with promoting safe flight of civil aircraft in air commerce by prescribing regulations for practices, methods, and procedures the Administrator finds necessary for safety in air commerce. This regulation is within the scope of that authority because it addresses an unsafe condition that is likely to exist or develop on products identified in this rulemaking action.

Regulatory Findings

We have determined that this AD will not have federalism implications under Executive Order 13132. This AD will not have a substantial direct effect on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government.

For the reasons discussed above, I certify that this AD:

(1) Is not a ''significant regulatory action'' under Executive Order 12866;

(2) Is not a ''significant rule'' under DOT Regulatory Policies and Procedures (44 FR 11034, February 26, 1979); and

(3) Will not have a significant economic impact, positive or negative, on a substantial number of small entities under the criteria of the Regulatory Flexibility Act.

We prepared a regulatory evaluation of the estimated costs to comply with this AD and placed it in the AD docket. See the **ADDRESSES** section for a location to examine the regulatory evaluation.

List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Safety.

Adoption of the Amendment

■ Accordingly, under the authority delegated to me by the Administrator, the FAA amends 14 CFR part 39 as follows:

PART 39—AIRWORTHINESS DIRECTIVES

■ 1. The authority citation for part 39 continues to read as follows:

Authority: 49 U.S.C. 106(g), 40113, 44701.

§ 39.13 [Amended]

■ 2. The Federal Aviation Administration (FAA) amends § 39.13 by adding the following new airworthiness directive (AD):

2006–15–12 Construcciones Aeronauticas, S.A. (CASA): Amendment 39–14692. Docket No. FAA–2005–22505; Directorate Identifier 2003–NM–283–AD.

Effective Date

(a) This AD becomes effective August 29, 2006.

Affected ADs

(b) None.

Applicability

(c) This AD applies to CASA Model C–212–CC airplanes, certificated in any category, modified in accordance with Supplemental Type Certificate (STC) ST02129AK, or by field approval using STC ST02129AK as a basis for the field approval.

Unsafe Condition

(d) This AD was prompted by our determination that affected airplanes, when carrying both cargo and passengers in the same compartment, cannot achieve the required level of performance. We are issuing this AD to prevent a hazardous quantity of smoke, flames, and/or fire extinguishing agent from the cargo compartment from entering a compartment occupied by passengers or crew.

Compliance

(e) You are responsible for having the actions required by this AD performed within the compliance times specified, unless the actions have already been done.

Modification

(f) As of 12 months after the effective date of this AD, no person may operate an airplane in the combi configuration, unless the actions specified by either paragraph (f)(1) or (f)(2) are done in accordance with a method approved by the Manager, Anchorage Aircraft Certification Office (ACO), FAA.

(1) Modify the airplane to incorporate a protective liner between the passengers and the cargo and to ensure compliance with section 25.855 (''Cargo or baggage compartment'') of the Federal Aviation Regulations (14 CFR 25.855).

(2) Comply with the terms and conditions specified in paragraphs (f)(2)(i) through (f)(2)(vi) of this AD.

(i) There are means to extinguish or control a fire without requiring a crewmember to enter the compartment.

(ii) There are means to exclude hazardous quantities of smoke, flames, or extinguishing agent from any compartment occupied by the crew or passengers.

(iii) There is a separate approved smoke detector or fire detector system to give warning at the pilot or flight engineer station.

(iv) Crew members must receive training in the use of the fire extinguishers and the cargo fire containment covers; they must also receive training in the use of the approved procedure for the elimination of smoke and fumes that is specified in the airplane flight manual (AFM).

(v) Two additional fire extinguishers must be carried on the airplane.

(vi) Limitations (f)(2)(i) through (f)(2)(v) must be documented as operating limitations in the Limitations section of the CASA C–212–CC AFM supplement.

Special Flight Permits

(g) Special flight permits may be issued in accordance with sections 21.197 and 21.199 of the Federal Aviation Regulations (14 CFR 21.197 and 21.199) to operate the airplane to a location where the airplane can be modified (if the operator elects to do so), provided no passengers are onboard.

Alternative Methods of Compliance (AMOCs)

(h)(1) The Manager, Anchorage ACO, FAA, has the authority to approve AMOCs for this AD, if requested in accordance with the procedures found in 14 CFR 39.19.

(2) Before using any AMOC approved in accordance with 14 CFR 39.19 on any airplane to which the AMOC applies, notify the appropriate principal inspector in the FAA Flight Standards Certificate Holding District Office.

Material Incorporated by Reference

(i) None.

Issued in Renton, Washington, on July 14, 2006.

Ali Bahrami,

Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. E6–11706 Filed 7–24–06; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. FAA–2006–24779; Directorate Identifier 2006–NM–044–AD; Amendment 39–14689; AD 2006–15–09]

RIN 2120–AA64

Airworthiness Directives; Airbus Model A300 Airplanes; Model A310 Airplanes; and Model A300 B4–600, B4–600R, and F4–600R Series Airplanes, and Model C4–605R Variant F Airplanes (Collectively Called A300–600 Series Airplanes)

AGENCY: Federal Aviation Administration (FAA), Department of Transportation (DOT).

ACTION: Final rule.

SUMMARY: The FAA is adopting a new airworthiness directive (AD) for all Airbus Model A300 airplanes and Model A310 airplanes, and for certain Airbus Model A300–600 series airplanes. This AD requires an inspection of the wing and center fuel tanks to determine if certain P-clips are installed and corrective action if necessary. This AD also requires an inspection of electrical bonding points of certain equipment in the center fuel tank for the presence of a blue coat and related investigative and corrective actions if necessary. This AD also requires installation of new bonding leads and electrical bonding points on certain equipment in the wing, center, and trim fuel tanks, as necessary. This AD results from fuel system reviews conducted by the manufacturer. We are issuing this AD to ensure continuous electrical bonding protection of equipment in the wing, center, and trim fuel tanks and to prevent damage to wiring in the wing and center fuel tanks, due to failed P-clips used for retaining the wiring and pipes, which could result in a possible fuel ignition source in the fuel tanks.

DATES: This AD becomes effective August 29, 2006.

The Director of the Federal Register approved the incorporation by reference of certain publications listed in the AD as of August 29, 2006.

ADDRESSES: You may examine the AD docket on the Internet at *http://dms.dot.gov* or in person at the Docket Management Facility, U.S. Department of Transportation, 400 Seventh Street, SW., Nassif Building, Room PL–401, Washington, DC.

Contact Airbus, 1 Rond Point Maurice Bellonte, 31707 Blagnac Cedex, France, for service information identified in this AD.

FOR FURTHER INFORMATION CONTACT: Tom Stafford, Aerospace Engineer, International Branch, ANM–116, Transport Airplane Directorate, FAA, 1601 Lind Avenue, SW., Renton, Washington 98057–3356; telephone (425) 227–1622; fax (425) 227–1149.

SUPPLEMENTARY INFORMATION:

Examining the Docket

You may examine the airworthiness directive (AD) docket on the Internet at *http://dms.dot.gov* or in person at the Docket Management Facility office between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays. The Docket Management Facility office (telephone (800) 647–5227) is located on the plaza level of the Nassif Building at the street address stated in the **ADDRESSES** section.

Discussion

The FAA issued a notice of proposed rulemaking (NPRM) to amend 14 CFR part 39 to include an AD that would apply to all Airbus Model A300 airplanes and Model A310 airplanes, and for certain Airbus Model A300 B4–600, B4–600R, and F4–600R Series Airplanes, and Model C4–605R Variant F airplanes (collectively called A300–600 series airplanes). That NPRM was published in the **Federal Register** on May 17, 2006 (71 FR 28611). That NPRM proposed to require an inspection of the wing and center fuel tanks to determine if certain P-clips are installed and corrective action if necessary. That NPRM also proposed to require an inspection of electrical bonding points of certain equipment in the center fuel tank for the presence of a blue coat and related investigative and corrective actions if necessary. That NPRM also proposed to require installation of new bonding leads and electrical bonding points on certain equipment in the wing, center, and trim fuel tanks, as necessary.

Comments

We provided the public the opportunity to participate in the development of this AD. We received no comments on the NPRM or on the determination of the cost to the public.

Conclusion

We have carefully reviewed the available data and determined that air safety and the public interest require adopting the AD as proposed.

Costs of Compliance

There are about 29 Model A300 airplanes, 63 Model A310 airplanes, and

102 Model A300–600 series airplanes of the affected design in the U.S. fleet. The following table provides the estimated costs, at an average labor rate of $80 per hour, for U.S. operators to comply with this AD. For some actions, the estimated work hours and cost of parts in the following table depend on the airplane configuration.

Model	Action	Work hours	Parts	Cost per airplane	Number of U.S.-registered airplanes	Fleet cost
A300 airplanes	Inspect wing and center fuel tanks for P-clips.	40	None	$3,200	29	$92,800
	Install bonding leads/points in wing and center fuel tank.	136–155	$3,800–5,200	14,680–17,600	29	425,720–510,400
A310 airplanes	Inspect wing and center fuel tanks for P-clips.	40	None	3,200	63	201,600
	Install bonding leads/points in wing and center fuel tank.	248–285	$8,840–9,190	28,680–31,990	63	1,806,840–2,015,370
	Inspect and install bonding leads/points in the trim fuel tank.	53–61	$50–70	4,290–4,950	63	270,270–311,850
A300–600 series airplanes	Inspect wing and center fuel tanks for P-clips.	40	None	3,200	102	326,400
	Install bonding leads/points in wing and center fuel tank.	157–185	$8,840–9,190	21,400–23,990	102	2,182,800–2,446,980
	Inspect and install bonding leads/points in the trim fuel tank.	2–61	50–70	210–4,950	102	21,420–504,900

Authority for This Rulemaking

Title 49 of the United States Code specifies the FAA's authority to issue rules on aviation safety. Subtitle I, Section 106, describes the authority of the FAA Administrator. Subtitle VII, Aviation Programs, describes in more detail the scope of the Agency's authority.

We are issuing this rulemaking under the authority described in Subtitle VII, Part A, Subpart III, Section 44701, ''General requirements.'' Under that section, Congress charges the FAA with promoting safe flight of civil aircraft in air commerce by prescribing regulations for practices, methods, and procedures the Administrator finds necessary for safety in air commerce. This regulation is within the scope of that authority because it addresses an unsafe condition that is likely to exist or develop on products identified in this rulemaking action.

Regulatory Findings

We have determined that this AD will not have federalism implications under Executive Order 13132. This AD will not have a substantial direct effect on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government.

For the reasons discussed above, I certify that this AD:

(1) Is not a ''significant regulatory action'' under Executive Order 12866;

(2) Is not a ''significant rule'' under DOT Regulatory Policies and Procedures (44 FR 11034, February 26, 1979); and

(3) Will not have a significant economic impact, positive or negative, on a substantial number of small entities under the criteria of the Regulatory Flexibility Act.

We prepared a regulatory evaluation of the estimated costs to comply with this AD and placed it in the AD docket. See the **ADDRESSES** section for a location to examine the regulatory evaluation.

List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Incorporation by reference, Safety.

Adoption of the Amendment

■ Accordingly, under the authority delegated to me by the Administrator, the FAA amends 14 CFR part 39 as follows:

PART 39—AIRWORTHINESS DIRECTIVES

■ 1. The authority citation for part 39 continues to read as follows:

Authority: 49 U.S.C. 106(g), 40113, 44701.

§ 39.13 [Amended]

■ 2. The Federal Aviation Administration (FAA) amends § 39.13 by adding the following new airworthiness directive (AD):

2006–15–09 Airbus: Amendment 39–14689. Docket No. FAA–2006–24779; Directorate Identifier 2006–NM–044–AD.

Effective Date

(a) This AD becomes effective August 29, 2006.

Affected ADs

(b) None.

Applicability

(c) This AD applies to the Airbus airplanes identified in paragraphs (c)(1) and (c)(2) of this AD, certificated in any category.

(1) All Model A300 airplanes and Model A310 airplanes.

(2) Model A300 B4–601, B4–603, B4–620, and B4–622 airplanes; Model A300 B4–605R and B4–622R airplanes; Model A300 F4–605R and F4–622R airplanes; and Model A300 C4–605R Variant F airplanes; except those airplanes identified in paragraphs (c)(2)(i) and (c)(2)(ii) of this AD.

(i) Airplanes not equipped with trim fuel tanks on which Airbus Modifications 12226, 12365, and 12308 have been incorporated in production.

(ii) Airplanes equipped with trim fuel tanks on which Airbus Modifications 12226, 12365, 12308, 12294, and 12476 have been incorporated in production.

Unsafe Condition

(d) This AD results from fuel system reviews conducted by the manufacturer. We are issuing this AD to ensure continuous electrical bonding protection of equipment in the wing, center, and trim fuel tanks and to prevent damage to wiring in the wing and center fuel tanks, due to failed P-clips used for retaining the wiring and pipes, which could result in a possible fuel ignition source in the fuel tanks.

Compliance

(e) You are responsible for having the actions required by this AD performed within

the compliance times specified, unless the actions have already been done.

Service Bulletin References

(f) The term ''service bulletin,'' as used in this AD, means the Accomplishment Instructions of the service bulletin identified in Table 1 of this AD, as applicable.

TABLE 1.—SERVICE BULLETIN REFERENCES

For Airbus—	And the actions specified in—	Use Airbus Service Bulletin—	Dated—
Model A300 airplanes	Paragraph (g) of this AD	A300–28–0081	July 20, 2005.
	Paragraph (h) of this AD	A300–28–0079	September 29, 2005.
Model A310 airplanes	Paragraph (g) of this AD	A310–28–2143	July 20, 2005.
	Paragraph (h) of this AD	A310–28–2142	August 26, 2005.
	Paragraph (i) of this AD	A310–28–2153	July 20, 2005.
Model A300 B4–601, B4–603, B4–620, and B4–622 airplanes; Model A300 B4–605R and B4–622R airplanes; Model A300 F4–605R and F4–622R airplanes; and Model A300 C4–605R Variant F airplanes.	Paragraph (g) of this AD	A300–28–6068	July 20, 2005.
	Paragraph (h) of this AD	A300–28–6064	July 28, 2005.
	Paragraph (i) of this AD	A300–28–6077	July 25, 2005.

Inspection and Corrective Actions

(g) Within 59 months after the effective date of this AD: Do a general visual inspection of the right and left wing fuel tanks and center fuel tank, if applicable, to determine if any NSA5516–XXND and NSA5516–XXNJ type P-clips are installed for retaining wiring and pipes in any tank, and do all applicable corrective actions before further flight after the inspection, by accomplishing all the actions specified in the service bulletin.

Note 1: For the purposes of this AD, a general visual inspection is: ''A visual examination of an interior or exterior area, installation, or assembly to detect obvious damage, failure, or irregularity. This level of inspection is made from within touching distance unless otherwise specified. A mirror may be necessary to ensure visual access to all surfaces in the inspection area. This level of inspection is made under normally available lighting conditions such as daylight, hangar lighting, flashlight, or droplight and may require removal or opening of access panels or doors. Stands, ladders, or platforms may be required to gain proximity to the area being checked.''

Installation of Bonding Leads and Points for Wing and Center Fuel Tanks

(h) Within 59 months after the effective date of this AD: Do the actions specified in paragraphs (h)(1) and (h)(2) of this AD, by accomplishing all the actions specified in the service bulletin.

(1) In the center fuel tank, if applicable, do a general visual inspection of the electrical bonding points of the equipment identified in the service bulletin for the presence of a blue coat, and do all related investigative and corrective actions before further flight after the inspection.

(2) In the left and right wing fuel tanks and center fuel tank, if applicable, install bonding leads and electrical bonding points on the equipment identified in the service bulletin.

Installation of Bonding Leads and Points for the Trim Fuel Tank

(i) For Model A310 airplanes; Model A300 B4–601, B4–603, B4–620, and B4–622 airplanes; Model A300 B4–605R and B4–622R airplanes; Model A300 F4–605R and F4–622R airplanes; and Model A300 C4–605R Variant F airplanes; equipped with a trim fuel tank: Within 59 months after the effective date of this AD, install a new bonding lead(s) on the water drain system of the trim fuel tank and install electrical bonding points on the equipment identified in the service bulletin in the trim fuel tank, by accomplishing all the actions specified in the service bulletin, as applicable.

Parts Installation

(j) As of the effective date of this AD, no person may install any NSA5516–XXND or NSA5516–XXNJ type P-clip for retaining wiring and pipes in any wing, center, or trim fuel tank, on any airplane.

Alternative Methods of Compliance (AMOCs)

(k)(1) The Manager, International Branch, ANM–116, Transport Airplane Directorate, FAA, has the authority to approve AMOCs for this AD, if requested in accordance with the procedures found in 14 CFR 39.19.

(2) Before using any AMOC approved in accordance with § 39.19 on any airplane to which the AMOC applies, notify the appropriate principal inspector in the FAA Flight Standards Certificate Holding District Office.

Related Information

(l) French airworthiness directive F–2006–031, dated February 1, 2006, also addresses the subject of this AD.

Material Incorporated by Reference

(m) You must use the Airbus service bulletins identified in Table 2 of this AD to perform the actions that are required by this AD, unless the AD specifies otherwise. The Director of the Federal Register approved the incorporation by reference of these documents in accordance with 5 U.S.C. 552(a) and 1 CFR part 51. Contact Airbus, 1 Rond Point Maurice Bellonte, 31707 Blagnac Cedex, France, for a copy of this service information. You may review copies at the Docket Management Facility, U.S. Department of Transportation, 400 Seventh Street SW., Room PL–401, Nassif Building, Washington, DC; on the Internet at *http://dms.dot.gov*; or at the National Archives and Records Administration (NARA). For information on the availability of this material at the NARA, call (202) 741–6030, or go to *http://www.archives.gov/federal_register/code_of_federal_regulations/ibr_locations.html.*

TABLE 2.—MATERIAL INCORPORATED BY REFERENCE

Airbus Service Bulletin—	Dated—
A300–28–0079	September 29, 2005.
A300–28–0081	July 20, 2005.
A300–28–6064	July 28, 2005.
A300–28–6068	July 20, 2005.
A300–28–6077	July 25, 2005.
A310–28–2142	August 26, 2005.
A310–28–2143	July 20, 2005.
A310–28–2153	July 20, 2005.

Issued in Renton, Washington, on July 14, 2006.

Ali Bahrami,

Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. E6–11713 Filed 7–24–06; 8:45 am]

BILLING CODE 4910–13–P

CONSUMER PRODUCT SAFETY COMMISSION

16 CFR Part 1115

Substantial Product Hazard Reports

AGENCY: Consumer Product Safety Commission.

ACTION: Final interpretative rule.

SUMMARY: Section 15(b) of the Consumer Product Safety Act, 15 U.S.C. 2064(b), requires manufacturers, distributors, and retailers of consumer products to

report potential product hazards to the Consumer Product Safety Commission. On May 26, 2006, the Commission solicited comments on proposed revisions to its interpretative rule advising manufacturers, distributors, and retailers how to comply with the requirements of section 15(b). The proposed revisions identified additional factors the Commission and staff consider when assessing whether a product is defective or not. The proposed revisions also clarified that compliance with voluntary or mandatory product safety standards may be considered by the Commission in making certain determinations under section 15. After considering public comments, the Commission issues the accompanying final rule.[1]

DATES: This final rule becomes effective on July 25, 2006.

FOR FURTHER INFORMATION CONTACT: John Gibson Mullan, Assistant Executive Director, Compliance and Field Operations at (301) 504–7626.

SUPPLEMENTARY INFORMATION:

A. Background

To provide further guidance, clarity and transparency on reporting obligations under section 15(b) of the Consumer Product Safety Act (CPSA), 15 U.S.C. 2064(b), the Commission, on May 26, 2006 (71 FR 30350) proposed revisions to its interpretative rules regarding reporting of possible substantial product hazards. Section 15(b) of the CPSA requires that every manufacturer (including an importer), distributor or retailer of a consumer product who obtains information which reasonably supports the conclusion that its product fails to comply with an applicable consumer product safety rule or with a voluntary consumer product safety standard upon which the Commission has relied under section 9 of the CPSA, or contains a defect which could create a substantial product hazard as defined in section 15(a)(2) of the CPSA, or creates an unreasonable risk of serious injury or death, shall immediately inform the Commission of such failure to comply, of such defect, or of such risk, unless the manufacturer, distributor or retailer has actual knowledge that the Commission has been adequately informed. In 1978, the Commission first published an interpretative rule, 16 CFR part 1115, which explained the section 15(b) reporting requirement and provided guidance on filing section 15(b) reports.

In this notice the Commission finalizes revisions to the interpretative rule to clarify factors relevant to section 15(b) reporting determinations. These revisions are not intended to reduce the number of reports to the Office of Compliance, to reduce or change the types of information reported, or to suggest a diminished need to report.

The Commission received 14 comments in response to the proposed revisions. Joint comments were submitted by four ATV companies (Kawaski Motors Corp., USA; American Honda Motor Co., Inc.; Polaris Industries Inc., and Yamaha Motor Corporation, U.S.A.). Joint comments were also submitted by four consumer groups (Consumers Union, Consumer Federation of America, Kids In Danger, and U.S. Public Interest Research Group). Eight commenters supported the revisions; two of the eight suggested clarifications to certain provisions. Six commenters opposed the revisions; five of the six suggested that the Commission not adopt the revisions and one of the six suggested that the Commission keep the record open. The Commission received a number of comments in support of a regulation related to the assessment of civil penalties pursuant to section 20 of the CPSA, 15 U.S.C. 2069(b), (c). A separate **Federal Register** notice is being issued for public comment on this issue.

The Commission received a number of comments that went beyond the scope of the proposed revisions. These included a suggestion for a new appeal process for preliminary determinations relating to substantial product hazards, issues concerning the hazards presented by counterfeit products, more widespread notice about the Fast Track recall process, General Counsel review of recommendations of proposed administrative complaints, and provisions in the adjudicative rules for joinder and intervention. The Commission is not incorporating any of these suggestions since they were not part of the proposed revisions.

A summary of the comments on the proposed revisions and our responses appear below.

B. Section 1115.4 Defect

The first revision clarifies the Commission's discussion of ''defect'' by adding additional criteria Commission staff use to evaluate whether a risk of injury is the type of risk that will render a product defective, thus possibly triggering a reporting obligation under section 15(b). The rule currently states that in determining whether the risk of injury associated with a product is the type of risk which will render a product defective, the Commission and staff consider, as appropriate: the utility of the product involved; the nature of the risk of injury which the product presents; the necessity for the product; the population exposed to the product and its risk of injury; the Commission's own experience and expertise; the case law interpreting Federal and State public health and safety statutes; the case law in the area of products liability; and other factors relevant to the determination. The Commission proposed to add the following factors as considerations: the obviousness of such risk; the adequacy of warnings and instructions to mitigate such risk; the role of consumer misuse of the product, and the foreseeability of such misuse.

The commenters who opposed the revisions suggested that inclusion of these additional factors does not clarify a firm's reporting obligations but weakens the intent of the original regulation by giving firms additional factors upon which to argue that a particular product is not defective and thereby avoid reporting. Several commenters also suggested that a firm could rely on just one of the factors—like consumer misuse—to negate a reporting obligation.

The Commission's intent in adopting this revision is to give further guidance to firms about reporting defects in their products. The determination of whether a product is defective is a threshold issue in evaluating reporting obligations under section 15(b) of the CPSA and is one of the most critical determinations a company is required to make under the CPSA. A firm must report if it obtains information which reasonably supports the conclusion that a product it manufactures and/or distributes contains a defect which could create a substantial product hazard. 15 U.S.C. 2064(b)(2). The regulatory criteria for evaluating whether a product presents a risk of injury that may render it defective have been in effect since 1978. In the nearly 30 years since then, the Commission and staff have evaluated thousands of products using many criteria, including, as appropriate, the criteria now being adopted. The Commission has concluded, based on experience and practice in applying the criteria, that the additional factors—the obviousness of such risk; the adequacy of warning and instructions to mitigate such risk; the role of consumer misuse of the product and the foreseeability of such misuse—help clarify the existing factors in the regulation and enable a better analysis of whether the risk of injury associated with a product is the

[1] The Commission voted 2–1 to issue the final interpretative rule, Commissioner Thomas Moore dissenting. Chairman Stratton and Commissioner Nord filed statements which are available from the Office of the Secretary or on the Commission's Web site at *http://www.cpsc.gov.*

type of risk which will render it defective. This regulation contemplates consideration of a number of appropriate factors in making such a determination. Reliance on one factor alone cannot negate a reporting obligation if other factors, as applied, reasonably support the conclusion that a defect exists.

The Commission staff already considers the proposed factors in making decisions about potential defects. The current defect regulation specifies that the Commission and staff will, as appropriate, consider the case law in the area of product liability. Two commenters pointed out that the case law in the product liability area, as reflected in the Restatement of Torts, uses all of the additional criteria proposed. Thus, the regulation only makes explicit what was already implicit in the Commission's regulation.

C. Section 1115.12(g)(1)(ii) Number of Defective Products Distributed In Commerce

The Commission proposed adding the following statement to an evaluation of the number of defective products distributed in commerce when making a substantial product hazard determination: ''The Commission also recognizes that the risk of injury from a product may decline over time as the number of products being used by consumers decreases.''

Three commenters objected to this provision. One commenter contended that the proposed regulatory change is untrue because the individual risk to a user from a defective product bears no relationship to the number of products in use. Commenters opposed to the provision also stated that the proposal gave manufacturers an incentive to wait to report and to hide problems until a product is older.

The Commission has clarified the language of this provision in response to comments. By this provision, the Commission is merely recognizing that the number of products remaining in consumers hands at any given time is relevant to a substantial product hazard determination and that determination can be influenced by a decline over time in the number of products remaining in use. The current regulation can be misleading because it suggests that the number of products originally distributed is the only relevant number in deciding whether a defective product presents a substantial risk of injury. When a potential hazard first appears long after a product was sold, however, the more relevant number is not the number of products originally sold but the number still with consumers. A firm may still have a reporting obligation in such circumstances. The Commission stresses that firms should never delay reporting in anticipation of, or because of, a decrease in the number of products in use. Firms that delay reporting for such reasons will be subject to civil penalties. The final regulation is reworded to avoid use of the term ''risk'' which generated some confusion.

D. Section 1115.8 Compliance With Product Safety Standards

The proposed revisions also add a new section § 1115.8, ''Compliance with Product Safety Standards.'' This section is intended to further explain how the Commission views compliance with applicable voluntary or mandatory standards, particularly in the context of decisions under section 15 of the CPSA. Three of the commenters raised the objection that this new provision creates a safe harbor for companies by negating a reporting obligation when a product complies with a voluntary or mandatory standard.

Voluntary Standards. The opposing commenters mistake the scope and intent of this provision. It provides no safe harbor from a reporting obligation. The text of the rule states that compliance with voluntary standards ''may be relevant'' to preliminary determinations. This language clearly does not foreclose the possibility that the staff may make a preliminary determination that a product presents a substantial product hazard notwithstanding compliance with all applicable voluntary standards. Although the Commission strongly supports voluntary standards, such standards are not always adequate. In some cases, a defect may involve a product characteristic or aspect of performance not addressed by a standard that is adequate in other respects, or a product that meets voluntary standards by design may be taken out of compliance by a manufacturing defect. In short, if a voluntary standard exists and addresses a product hazard, and the product complies with such a standard, then that compliance may be relevant to considering whether a product preliminarily presents a substantial product hazard. Compliance with a voluntary standard does not preclude a determination that a substantial product hazard exists, nor will it relieve a firm of the requirement to report when a substantial product hazard may exist. Firms must not treat compliance with standards as an excuse not to report. They should report if a substantial product hazard may exist and allow the staff to consider the significance of the standard. In the past, the Commission has sought recalls for products that have complied with voluntary standards as well as products that did not comply. Compliance with an applicable voluntary standard, as stated in the final regulation, is merely one factor in this evaluation.

Mandatory Standards. For reasons similar to those stated above, the Commission's provision for mandatory standards does not negate a reporting obligation nor provide safe harbor for the failure to report. There have been a number of occasions in the experience of the Commission staff when a product is determined to contain a defect that could create a substantial product hazard even though such product complies with a mandatory standard. The statute and regulations contemplate a report in such a circumstance. In fact, reports are especially important in such cases because they may be the Commission's only indication that the mandatory standards are in need of revision. At the same time, the Commission appreciates that it is generally inappropriate to hold firms to a higher standard for products retroactively. As stated in the regulation, which is slightly reworded in the final text, compliance with a mandatory standard should play a role in the staff's determination as to whether a corrective action is necessary.

List of Subjects in 16 CFR Part 1115

Administrative practice and procedure, Business and Industry, Consumer protection, Reporting and recordkeeping requirements.

■ Accordingly, 16 CFR part 1115 is amended as follows:

PART 1115—SUBSTANTIAL PRODUCT HAZARD REPORTS

■ 1. The authority citation for part 1115 continues to read as follows:

Authority: 15 U.S.C. 2061, 2064, 2065, 2066(a), 2068, 2070, 2071, 2073, 2076, 2079 and 2084.

■ 2. In § 1115.4, amend the concluding text by adding a new phrase after the phrase, ''the population exposed to the product and its risk of injury;'' to read as follows:

§ 1115.4 Defect.

* * * the obviousness of such risk; the adequacy of warnings and instructions to mitigate such risk; the role of consumer misuse of the product and the foreseeability of such misuse;'' * * *

■ 3. Section 1115.8 is added to read as follows:

§ 1115.8 Compliance with product safety standards.

(a) *Voluntary standards.* The CPSA and other federal statutes administered by the Commission generally encourage the private sector development of, and compliance with voluntary consumer product safety standards to help protect the public from unreasonable risks of injury associated with consumer products. To support the development of such consensus standards, Commission staff participates in many voluntary standards committees and other activities. The Commission also strongly encourages all firms to comply with voluntary consumer product safety standards and considers, where appropriate, compliance or non-compliance with such standards in exercising its authorities under the CPSA and other federal statutes, including when making determinations under section 15 of the CPSA. Thus, for example, whether a product is in compliance with applicable voluntary safety standards may be relevant to the Commission staff's preliminary determination of whether that product presents a substantial product hazard under section 15 of the CPSA.

(b) *Mandatory standards.* The CPSA requires that firms comply with all applicable mandatory consumer product safety standards and to report to the Commission any products which do not comply with either mandatory standards or voluntary standards upon which the Commission has relied. As is the case with voluntary consumer product safety standards, compliance or non-compliance with applicable mandatory safety standards may be considered by the Commission and staff in making relevant determinations and exercising relevant authorities under the CPSA and other federal statutes. Thus, for example, while compliance with a relevant mandatory product safety standard does not, of itself, relieve a firm from the need to report to the Commission a product defect that creates a substantial product hazard under section 15 of the CPSA, it will be considered by staff in making the determination of whether and what type of corrective action may be required.

■ 4. Section 1115.12 is amended by adding a new sentence at the end of paragraph (g)(1)(ii) to read as follows:

§ 1115.12 Information which should be reported; evaluating substantial product hazard.

* * * * *

(g) * * *

(1) * * *

(ii) * * * The Commission also recognizes that the number of products remaining with consumers is a relevant consideration.

* * * * *

Dated: July 18, 2006.

Todd A. Stevenson,

Secretary, Consumer Product Safety Commission.

[FR Doc. E6–11758 Filed 7–24–06; 8:45 am]

BILLING CODE 6355–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

21 CFR Part 101

[Docket No. 2001N–0548] (formerly Docket No. 01N–0548)

Food Labeling; Guidelines for Voluntary Nutrition Labeling of Raw Fruits, Vegetables, and Fish

AGENCY: Food and Drug Administration, HHS.

ACTION: Final rule.

SUMMARY: The Food and Drug Administration (FDA) is amending the voluntary nutrition labeling regulations by updating the names and the nutrition labeling values for the 20 most frequently consumed raw fruits, vegetables, and fish in the United States and clarifying guidelines for the voluntary nutrition labeling of these foods. Availability of the updated nutrition labeling values in retail stores and on individually packaged raw fruits, vegetables, and fish will enable consumers to make better purchasing decisions to reflect their dietary needs.

EFFECTIVE DATE: January 1, 2008.

FOR FURTHER INFORMATION CONTACT: Mary Brandt, Center for Food Safety and Applied Nutrition (HFS–840), Food and Drug Administration, 5100 Paint Branch Pkwy., College Park, MD 20740, 301–436–1788.

SUPPLEMENTARY INFORMATION:

Table of Contents

I. Background

In response to requirements of the Nutrition Labeling and Education Act of 1990 (''the 1990 amendments'') (Public Law 101–135), which amended the Federal Food, Drug, and Cosmetic Act (the act), FDA (we) published final regulations in the **Federal Register** of November 27, 1991 (56 FR 60880) (hereinafter identified as ''the 1991 final rule''), and corrections in the **Federal Registers** of March 6, 1992 (57 FR 8174), and March 26, 1992 (57 FR 10522), that: (1) Identified the 20 most frequently consumed raw fruits, vegetables, and fish in the United States, which are those varieties purchased raw but not necessarily consumed raw; (2) established guidelines for the voluntary nutrition labeling of these foods; and (3) set the criteria for food retailers to meet substantial compliance with these guidelines. The 1991 final rule also required FDA to publish proposed updates of the nutrition labeling data for the 20 most frequently consumed raw fruits, vegetables, and fish (or a notice

that the data sets have not changed) at least every 2 years (56 FR 60880 at 60888 and 60891).

Next, FDA published a proposed rule on the voluntary nutrition labeling program in the **Federal Register** of July 18, 1994 (59 FR 36379) (hereinafter identified as ''the 1994 proposed rule''), a correction in the **Federal Register** of July 21, 1994 (59 FR 37190), and a final rule in the **Federal Register** of August 16, 1996 (61 FR 42742) (hereinafter identified as ''the 1996 final rule''). In the 1996 final rule, among other actions, FDA revised the following: (1) The nutrition labeling values for the 20 most frequently consumed raw fruits, vegetables, and fish in the United States and (2) the guidelines for the voluntary nutrition labeling of these foods. FDA also modified the guidelines in § 101.45(b) (21 CFR 101.45(b)), in response to comments, to state that FDA would publish every 4 years (rather than 2 years) proposed updates of the nutrition data or a notice that the data sets have not changed from the previous publication (comment 12, 61 FR 42742 at 42746 and 42760).

FDA then published a proposed rule on the voluntary nutrition labeling program in the **Federal Register** of March 20, 2002 (67 FR 12918) (hereinafter identified as ''the 2002 proposed rule''), and a correction to the Docket number and extension of the comment period in the **Federal Register** of June 6, 2002 (67 FR 38913). The 2002 proposed rule: (1) Updated the names and nutrition labeling values for the 20 most frequently consumed raw fruits, vegetables, and fish in the United States and (2) clarified the guidelines for the voluntary nutrition labeling of these foods. Subsequently, FDA again reopened the comment period until June 3, 2005 (70 FR 16995, April 4, 2005) (hereinafter identified as ''the 2005 reopening of the comment period''), to allow all interested parties the opportunity to review its tentative nutrition labeling values based upon data FDA received within and after the comment period for the 2002 proposed rule, and to comment on the additional nutrient data for some of the 20 most frequently consumed raw fruits, vegetables, and fish. FDA also stated that it would evaluate any new data submissions during the reopened comment period and would consider use of those data in a final rule.

II. Comments on the 2002 Proposed Rule and 2005 Reopening of the Comment Period

FDA received 21 responses to the 2002 proposed rule and 30 responses to the tentative nutrition labeling values set forth in its 2005 reopening of the comment period document, each of which contained one or more comments. New data also were submitted in response to the 2005 reopening of the comment period. Comments generally supported the 2002 proposed rule, including the new values set forth in the 2005 reopening of the comment period document. A number of comments that were received are not considered here because they are beyond the scope of this regulation, including those comments on labeling of meat, poultry, and pork products; labeling of possible positive or ill side effects of consuming raw produce and fish; expiration dating; physical exercise; inclusion of additional nutrients and amino acids; protection of the public from profiteers; genetically modified products; pesticide residues, chemicals, and processes; and monosodium glutamate (MSG). Several comments suggested modification and revision in various provisions of the 2002 proposed rule, as revised by the 2005 reopening of the comment period. These latter comments are discussed in detail in this section of the document.

To make it easier to identify comments and FDA's responses to the comments, the word ''Comment'' will appear in parenthesis before the description of the comment, and the word ''Response'' will appear in parenthesis before FDA's response. We have also numbered each comment to make it easier to identify a particular comment. The number assigned to each comment is purely for organizational purposes and does not signify the comment's value or importance or the order in which it was submitted.

A. General Comments

(Comment 1) One comment, which supported the agency's efforts to establish accurate, meaningful nutrition information, requested that FDA post this information on its Web site and permit retailers who have developed Web sites to incorporate links from the retailer Web site to the FDA nutrition information.

(Response) FDA agrees with this suggestion and has posted the nutrition labeling values on the Internet at *www.cfsan.fda.gov*. We encourage retailers, industry, trade associations, academia, and other government agencies to provide links to that information.

B. Consistency Among Government Agencies in Providing Nutrient Information

(Comment 2) Several comments expressed concern that the proposed changes to some of the nutrient values appear inconsistent from the U.S. Department of Agriculture (USDA) Nutrient Database for Standard Reference (SR) (Ref. 1) and from its data source, the USDA National Nutrient Data Bank (NNDB) (Ref. 2). One comment suggested that whenever possible, FDA should consider SR values in addition to the agency's own 95 percent prediction limit when determining label values.

(Response) FDA agrees that some of its nutrient values differ from data found in the USDA SR and NNDB. As we explained in the 1996 final rule (61 FR 42742 at 42743), FDA does not agree that mean values from USDA databases are appropriate for nutrition labeling.

We support use of the USDA NNDB and associated USDA SR for many nutritional purposes and recognize the USDA SR as the most comprehensive nutrient database in the United States and the basis of much nutrition software. For this reason, we have used all data submitted by USDA to update the nutrition labeling values for raw fruits and vegetables, including the data from its 2001–2002 nationwide sampling study of fruits and vegetables for 16 of the 20 most frequently consumed raw fruits and 12 of the 20 most frequently consumed raw vegetables that it submitted in response to the 2002 proposed rule (see *http://www.fda.gov/ohrms/dockets/dailys/02/Aug02/080602/01n–0548–c000006–vol1.pdf*) and (see *http://www.fda.gov/OHRMS/DOCKETS/98fr/01n–0548–bkg0002–03–Tab–01–vol4.pdf*) and its data for raw mushrooms in response to the 2005 reopening of the comment period, as well as data from other sources, as described later in this final rule. In addition, we used data from the USDA NNDB to establish nutrient levels for Chinook salmon in response to comments to the 2002 proposed rule. Raw nutrient data (individual analytical data points) from the USDA NNDB also provide the basis of the nutrient levels for most of the raw fish. Because of the lack of data for vitamin A and vitamin C in raw fish, we have based the values for most fish in the voluntary nutrition labeling program on data published in the USDA SR, which are mean values.

As stated in the 1996 final rule (61 FR 42742 at 42743), some of USDA's food composition data published in the SR are not fully representative because they are based on small sample sizes or do not take into account specific variables, such as geographic area. We obtained data for many of the raw fruits, vegetables, and fish from the USDA NNDB and SR, but, where possible, instead of using the mean values, we

applied compliance calculations based on 95 percent prediction intervals to those data (as well as to other data sources) and used the resulting adjusted values that account for variability in the nutrient.

To meet the requirements for compliance in § 101.9(g)(4) and (g)(5) (21 CFR 101.9(g)(4) and (g)(5)), the agency encourages manufacturers to use FDA compliance calculations based on 95 percent prediction intervals to determine the nutrition labeling values for their products. We provide guidance explaining this calculation and for industry to use to develop nutrition labeling values in the ''FDA Nutrition Labeling Manual—A Guide for Developing and Using Databases'' (the Nutrition Labeling Manual) (Ref. 3). The Nutrition Labeling Manual more fully explains the rationale and process for conducting and using compliance calculations based upon 95 percent prediction intervals.

(Comment 3) Several comments stated that it is important to have consistency in the nutrition information that is communicated to the public and that FDA should do more to bring greater harmony among the government's nutrition information, including ensuring that nutrient values are consistent with the nutrition messages publicized by the 2005 Dietary Guidelines for Americans.

(Response) We believe it is important to have consistency in the nutrition information that is communicated to the public; however, there are some fundamental differences in the nutrient values being established in this final rule and the nutrition messages publicized by the 2005 Dietary Guidelines for Americans. The Dietary Guidelines for Americans (Ref. 4) recommends the increased intake of fruits, vegetables, and fish and cites nutrient data from the USDA SR in the report that they released January 12, 2005. The data provided by the 2005 Dietary Guidelines for Americans were mean values per 100 gram (g) of product and were not on the same metric as the nutrition labeling values in Appendices C and D to part 101 (21 CFR part 101), which are provided on a serving size basis and are required in § 101.45(b) for labeling of the 20 most frequently consumed raw fruits, vegetables, and fish to ensure uniformity in declared values. Thus, some differences in nutrient levels are likely to be noted.

C. Need for Additional Research and Data

(Comment 4) Five comments requested that the final rule not be finalized at this time because they needed an additional 12 months to plan, execute, and evaluate additional nutrient research so that nutrient data are as complete and extensive as possible. The comments asserted that this additional time will allow for sampling products at different times of the year which will give them a more accurate reflection of the seasonal impact on nutrient content values. One of the comments stated the additional time also would allow the industry to establish more data points and thus increase the sample size of analytical values, which may help in calculating a more reliable mean value and improving the standard deviation, both factors needed to calculate the one-sided 95 percent prediction interval.

(Response) The data submitted to FDA in response to the 2002 proposed rule were available for public review for almost 3 years. We believe that this is more than an adequate amount of time for interested persons to complete nutrient analyses, provide additional data and information on market shares, determine the seasonal impact on nutrient content values, and establish more data points for calculating a more reliable nutrient value. We therefore have concluded that the requested additional time is not warranted. However, we do encourage the produce and fish industries to continue to conduct research on nutrient values and to submit new data to FDA for consideration in future updates, in accord with § 101.45(b).

(Comment 5) One comment urged that FDA utilize all credible data available and not a limited set of data from one study.

(Response) FDA agrees that it should utilize all credible data available in developing its nutritional values for raw fruit, vegetables, and fish. We recognize that additional nutrient data are needed to support the voluntary nutrition labeling of raw produce and fish because some of the current values are based on small sample sizes or older data and should be updated. However, many of the commodity groups and organizations that represent the produce and fish industries have not submitted new data to support the updating and refinement of the nutrient levels. We therefore can only use the data we have in updating and refining these nutrient levels. As stated in the response to comment 4 of this document, we encourage and will continue to encourage the produce and fish industries to conduct additional nutrient analyses to support the labeling of these foods and to submit those data to FDA for consideration in updating the nutrient levels in the next review of the voluntary nutrition labeling of raw produce and fish.

D. Consumer Support for Labeling of Raw Fruits, Vegetables, and Fish

(Comment 6) One comment recommended that FDA establish nutrition labeling values for more than just the 20 most frequently consumed raw products identified in the proposal.

(Response) Section 403(q)(4)(B) of the act (21 U.S.C. 343(q)(4)(B)) provides that FDA establish by regulation a list of the 20 varieties of vegetables, fruits, and raw fish most frequently consumed in a year. Therefore, we are not granting the comment's request in this final rule. However, we have provided for the nutrition labeling of raw fruits, vegetables, and fish that are not among the 20 most frequently consumed in § 101.45(c). In that regulation, FDA states that databases of nutrient values may be used to develop nutrition labeling values for specific varieties, species, or cultivars of those foods not among the 20 most frequently consumed raw fruits, vegetables, and fish. The food names and descriptions for the fruits, vegetables, and fish in nutrition labeling or in databases developed and submitted to FDA under this regulation should clearly identify these foods as distinct from foods among the most frequently consumed list for which we have provided data. Guidance in the development of databases for these foods may be found in the FDA Nutrition Labeling Manual (Ref. 3).

(Comment 7) Two comments requested that FDA make the voluntary guidelines mandatory and require retailers to provide nutrition information for raw fruits, vegetables, and fish products.

(Response) FDA disagrees with the comments. The compliance surveys we conducted in 1992, 1994, and 1996 (Ref. 5) do not support taking such action at this time. These surveys found that retailers exceeded the 60 percent substantial compliance standard set in § 101.43(c) by a large enough margin to provide confidence that the levels were not invalidated by statistical error. Levels of compliance for 1992, 1994, and 1996 were 76.9 percent, 81.4 percent, and 77.8 percent for raw produce and 74.3 percent, 76.8 percent, and 74.0 percent for raw fish. As our surveys have found substantial compliance over several years, we have no reason to evaluate the marketplace differently than we have in past years because there is no evidence that substantial compliance does not continue at the present time. Absent information suggesting otherwise, our evaluation of the available compliance

data and our projections based on those data indicate that compliance remains substantial at this time. Thus, at this time, we continue to encourage retailers to provide quantitative nutrition information for raw fruits, vegetables, and fish but will not publish regulations to make the provision of nutrition information mandatory.

E. Allowable Nutrient Content Claims

(Comment 8) One comment expressed concern that changing the existing nutrition label values for several key fruits and vegetables will weaken their perceived nutrient values (e.g., a fruit or vegetable that was previously an ''excellent source'' would now be considered a ''good source'') and some micronutrient claims would have to be dropped altogether because these fruits and vegetables will not be able to bear the same nutrient content claims that they once did under § 101.54. This situation could cause only fortified processed foods to be able to use the claim ''excellent source'' for some nutrients. The comment stated that the changes the agency is making would mean the loss of positive nutrition content claims for several vegetables and fruits that are currently considered to be the ''gold standard'' of nutrition among consumers.

(Response) We recognize and agree that based upon new data, some of the fruits and vegetables may no longer be able to bear the same nutrient content claims. We want to clarify, however, that as described in § 101.54, nutrient content claims must be based on the reference amounts customarily consumed (RACCs) and not on the serving sizes of products, which are derived from the RACCs. Specifically, § 101.54(b) states the provisions for ''high claims'' (''high,'' ''rich in,'' or ''excellent source of''), and § 101.54(c) provides those for ''good source claims'' (''good source,'' ''contains,'' or ''provides'').

Section 101.12(b) states that reference amounts shall be used as the basis for determining serving sizes for specific products. The RACCs shown in Table 2 of § 101.12 for fruits, vegetables, and fish in the voluntary nutrition labeling program include 140 g for fresh fruits, 30 g for avocado, 280 g for watermelon, 55 g for lemon and lime, 30 g for green onion, 110 g for fresh potatoes, 85 g for fresh vegetables, and 85 g for cooked, plain fish and shellfish. The serving sizes of raw produce displayed in Appendix C to part 101, while based on the RACCs, are generally not equivalent to the RACCs, which are listed in grams only, but are provided on the basis of a ''household measure'' of a food as well as in g and ounces (oz), such as 1 medium banana (126 g per (/) 4.5 oz) or 5 asparagus spears (93 g/3 oz). The serving size for all raw fish displayed in Appendix D to part 101 is 84 g/3 oz.

F. Declaration of ''Vitamin A'' or ''Carotenoid''

(Comment 9) One comment stated that fruits and vegetables contain carotenoid, which is the precursor of vitamin A, but not vitamin A itself, so the term ''vitamin A'' for fruits and vegetables should be changed to ''carotenoid''.

(Response) We believe it would be inaccurate to change the term ''Vitamin A'' to ''carotenoids'' for fresh fruit and vegetables given the understanding of the term ''Vitamin A'' and the relatively limited understanding of the functions of the hundreds of naturally occurring carotenoids. Vitamin A comprises a family of molecules containing a 20-carbon structure with a methyl substituted cyclohexenyl ring and a tetraene side chain with a hydroxy group (retinol), aldehyde group (retinal), carboxylic acid group (retinoic acid) or ester group (retinyl ester) at carbon 15. The term ''Vitamin A'' includes provitamin A carotenoids that are dietary precursors of retinol. The term ''retinoids'' refers to retinol, its metabolites, and synthetic analogues that have a similar structure. Carotenoids are polyisoprenoids, of which more than 600 forms exist. Of the many carotenoids in nature, several have provitamin A nutritional activity. Food composition data are available for only three (alpha-carotene, beta-carotene, and beta-crypotoxanthin). Because the term ''Vitamin A'' typically encompasses pro-vitamin A carotenoids, and most carotenoids have no food composition data available at this time, the suggested change would be inaccurate.

G. Updating of Reference Amounts

(Comment 10) One comment recommended that FDA not revise nutrient values for the 20 most frequently consumed raw fruits, vegetables, and fish until we finalized the April 4, 2005 (70 FR 17010) Advanced Notice of Proposed Rulemaking (ANPRM) (the April 2005 ANPRM), that requested comments on, among other issues, whether we should update the RACCs, the basis for serving size. The comment was of the view that we should wait until the reference amounts are revised to reflect what is currently available in the U.S. market.

(Response) FDA disagrees with the comment. We believe we should publish this final rule at this time and not wait until completion of the rulemaking process that we initiated by the April 2005 ANPRM. We are currently reviewing comments submitted in response to the ANPRM and have not determined whether or when we will update the RACCs. If we do decide to go forward with that rulemaking and revise the RACCs, we will then update the serving sizes of raw fruits, vegetables, and fish to reflect those revisions in future rulemaking for the voluntary nutrition labeling program.

H. Inclusion of Magnesium in Nutrition Labeling

(Comment 11) One comment suggested that FDA include the magnesium content of seafood in the voluntary nutrition labeling regulations. Cooked fish, the comment noted, can provide substantial amounts of magnesium in the U.S. diet, which would provide health benefits to American consumers. Another comment requested that magnesium be added to the banana's nutrition labeling profile in Appendix C to part 101. The latter comment noted that the 2005 Dietary Guidelines for Americans recommend that both adults and children increase their intake of magnesium from food sources.

(Response) FDA is not granting either of these requests. We note that the 2005 Dietary Guidelines state that based on dietary intake data or evidence of public health problems, intake levels of magnesium may be of concern for both adults and children (Ref. 4). However, none of the comments included nutrient data for magnesium for any of the fish in the voluntary nutrition labeling program, and we do not have access to magnesium data for any of the fish or the raw fruits and vegetables. Thus we cannot grant the request in the comment without such supporting data.

However, we consider magnesium an optional nutrient for both mandatory nutrition labeling and the voluntary nutrition labeling of raw fruits, vegetables, and fish. In the 1996 final rule, we noted that providing information on optional nutrients for foods in the voluntary program will be useful, and declarations of optional nutrients included on individual labels should follow the requirements under § 101.9(c).

I. Guidelines for Presentation of the Nutrition Labeling Values

1. Clarity in Guidelines for Raw Fruits and Vegetables and for Raw Fish

To provide clarity and consistency in the voluntary nutrition labeling of raw

fruits, vegetables, and fish, FDA proposed in § 101.45(a)(3) to: (1) Divide current § 101.45(a)(3)(iii) into two parts (i.e., into § 101.45(a)(3)(iii) and (a)(3)(iv)) so that § 101.45(a)(3)(iii) pertains only to raw fruits and vegetables and § 101.45(a)(3)(iv) pertains only to raw fish and (2) revise the wording for consistency and increased readability. No comments were received, and therefore these guidelines were adopted as proposed.

2. *Trans* Fatty Acid Labeling

FDA stated in the 2002 proposed rule that *trans* fatty acids would not be expected to be present in raw produce and that the footnote required in proposed § 101.45(a)(3)(iii) should be revised to state: ''Most fruits and vegetables provide negligible amounts of saturated fat, *trans* fat, and cholesterol * * *.'' Comments supported FDA's proposed revisions to § 101.45(a)(3)(iii), and therefore we have adopted it as proposed.

Also, FDA requested comments that provide data on the *trans* fat content of raw fish (or cooked fish without the addition of any ingredients, e.g., fat, breading, or seasoning).

(Comment 12) Several comments requested that FDA revise § 101.45(a)(3)(iv) to state that fish provide only negligible amounts of *trans* fat, or no *trans* fat. A comment from the fish industry noted that, unlike some animals, fish do not typically accumulate measurable levels of *trans* fat as a result of their metabolized food sources, and it is particularly true of wild-caught fish.

(Response) FDA agrees with the comments and has revised § 101.45(a)(3)(iv) to read as follows: ''When retailers provide nutrition labeling information for more than one raw fish on signs or posters or in brochures, notebooks, or leaflets, the listings for *trans* fat, dietary fiber and sugars may be omitted from the charts or individual nutrition labels if the following footnote is used, 'Fish provide negligible amounts of *trans* fat, dietary fiber, and sugars'.'' Appendices C and D to part 101 will show 0 g of *trans* fat for all varieties of raw fruits, vegetables, and fish.

J. Identification of the 20 Most Frequently Consumed Raw Fruits, Vegetables, and Fish in the United States

1. Fruits and Vegetables

There were no comments that recommended changing the top 20 most frequently consumed raw fruits and the top 20 most frequently consumed raw vegetables. For ease of use and to be consistent with the food names in Appendix C to part 101, we revised § 101.44(a) and (b) by listing the items in alphabetical order and by using the plural form of the food name when the serving size is more than one unit. Revised § 101.44(a) reads as follows: ''The 20 most frequently consumed raw fruits are: Apple, avocado (California), banana, cantaloupe, grapefruit, grapes, honeydew melon, kiwifruit, lemon, lime, nectarine, orange, peach, pear, pineapple, plums, strawberries, sweet cherries, tangerine, and watermelon.'' Revised § 101.44(b) reads as follows: ''The 20 most frequently consumed raw vegetables are: Asparagus, bell pepper, broccoli, carrot, cauliflower, celery, cucumber, green (snap) beans, green cabbage, green onion, iceberg lettuce, leaf lettuce, mushrooms, onion, potato, radishes, summer squash, sweet corn, sweet potato, and tomato.''

2. Fish

(Comment 13) Two comments requested that FDA revise § 101.45(a)(3)(iv) to add Chinook salmon to the salmon species. One comment stated that the vast majority of Chinook salmon is sold raw to the U.S. consumer, and the nutrient profile is most similar to the proposed category for the values for Atlantic/coho/sockeye salmon.

(Response) We agree with this suggestion and have revised 101.45(a)(3)(iv) to combine Atlantic, coho, Chinook and sockeye into one subgroup of salmon based upon similarity in nutrient values.

(Comment 14) One comment requested that FDA report information for farmed salmon separately from that for wild salmon because food supply and water quality greatly affect nutrition value of the food whether it is raised or caught.

(Response) We are not granting this request because there were no nutrient data submitted that supported providing nutrition information separately for farmed versus wild species of salmon or other types of fish.

K. Nutrition Labeling Values for the 20 Most Frequently Consumed Raw Fruits, Vegetables, and Fish

1. FDA Analysis of the Data

FDA considered the data from all of the sources identified in sections II.K.2 and II.K.3 of this final rule and used these data as the basis for deriving the updated nutrition labeling values for the 20 most frequently consumed raw fruits, vegetables, and fish in Appendices C and D to part 101. Reference 6 of this document provides complete documentation of the derivation of each nutrition labeling value for the raw fruits, vegetables, and fish covered in this final rule. The documentation also includes the actual (unrounded) values for total fat, total carbohydrate, and protein used to calculate calories and calories from fat for each food.

To the extent possible (i.e., for those nutrients for which sufficient data were available), we used the statistical methodology recommended in the FDA Nutrition Labeling Manual to produce the nutrition labeling values. The recommended statistical methodology uses compliance calculations that take into account the variation of nutrients in foods, as described in greater detail in the 2002 proposed rule.

a. *95 Percent Prediction Intervals.*

(Comment 15) One comment stated that proposed values appear to be imprecise and not representative when calculating for the one-sided 95 percent prediction interval. As a solution, the comment recommended that FDA use predicted values that fall within the range of the actual data points.

(Response) We agree with the comment that the 95 percent predicted value should fall within the range of the interval of all raw data points and have reviewed all nutrient data for all foods. If the 95 percent predicted value falls within the interval of all raw data points, then it is reasonable that it represent the nutrient level of the product. If for any reason, the 95 percent predicted value shows an invalid complete absence of a nutrient, if it is a negative value, or if it does not fall within the interval of all raw data points, it is likely that the mean will provide a better estimate of the nutrient than the predicted value. We also noted in the 2002 proposed rule that we frequently find that the mean and the predicted value round to the same value. In addition, we found that when the sample size was small (e.g., three or fewer analytical data points), the values derived from compliance calculations (using 95 percent prediction intervals) were less likely than the mean to represent the nutrient level. Thus, after a careful review of statistical and analytical data and considering all criteria listed in section II.K.1 of this document, we selected those values that more appropriately represent the nutrient level in the food.

(Comment 16) One comment asked that FDA provide clarification of the agency's compliance with the Data Quality Act in issuing the proposed nutrient labeling values.

(Response) In the Information Quality Act (IQA), Public Law No. 106–554,

section 515 (2000), see 44 U.S.C. 2516 note, Congress directed the Office of Management and Budget (OMB) to issue governmentwide guidelines designed to ensure and maximize the ''quality, objectivity, utility, and integrity of information * * * disseminated by Federal agencies,'' and in turn required agencies to issue their own guidelines concerning information quality and to establish administrative mechanisms to allow affected persons to seek and obtain correction of information maintained and disseminated by the agency that does not comport with the agency's guidelines. OMB's guidelines were published in the **Federal Register** of February 22, 2002 (67 FR 8452); HHS's guidelines were announced in the **Federal Register** of September 30, 2002 (67 FR 61343), and can be found at *http://aspe.hhs.gov/infoquality/guidelines/fda.shtml*. (FDA has verified the Web site address, but we are not responsible for subsequent changes to the Web site after this document publishes in the **Federal Register**.)

The nutrition labeling values that we provide in the voluntary nutrition labeling program are developed using a transparent process that provides data that are reproducible and are otherwise in compliance with FDA's IQA guidelines and the IQA. The process of setting and updating these values is identified in § 101.45(b) and (c) and in the FDA Nutrition Labeling Manual, described in § 101.45(b) and (c). The manual provides the general methodology that we recommend and follow to determine nutrition labeling values based on 95 percent prediction intervals, and FDA has provided detailed explanations of its methodology in the proposed rule and in response to comments in this preamble. In addition to the FDA Nutrition Labeling Manual, FDA staff members are available to answer questions and to provide further direction on the analytical, statistical, and methodological questions that arise concerning determination of nutrition labeling values. Stakeholders with new or additional nutrient data for any of the most frequently consumed raw fruits, vegetables, and fish are encouraged in § 101.45(b) and (c) to submit data to the agency for review and evaluation by the agency, and these data may be incorporated into subsequent revisions of the nutrition labeling information.

b. *Precision in Estimates.*

(Comment 17) One comment suggested that USDA and FDA emphasize in the regulation that the [serving] sizes given for produce items are expressed for the edible portion even though, as another comment noted, consumers buy foods in ''as purchased'' quantities. For example, a consumer buying a fruit with a large amount of inedible content (e.g., cantaloupe or peach), would likely believe that they are getting more nutrients than they are. The comment stated that having yield conversion factors would be necessary to make the nutrient information truly usable to the consumer.

(Response) We do not believe the emphasis requested is necessary, as we are not aware of consumer research that describes consumers' perceptions of the size of fruits and vegetables they purchase with respect to interpretation of nutrient information available on signs in retail outlets, which is based on a serving size set by FDA and reflects the amount customarily consumed. We are therefore not convinced that most consumers will require the precision in knowing at the point of purchase the yield information of the raw fruits and vegetables they purchase.

(Comment 18) One comment expressed concern that the proposed changes in nutrient levels mislead the public because listing the weight of any fruit or vegetable in unrounded numbers gives an impression of an unwarranted level of accuracy, when in fact fruits and vegetables vary in size.

(Response) FDA agrees that fruits and vegetables vary in size but disagrees that listing the weight in unrounded numbers gives an impression of an unwarranted level of accuracy. The nutrition labeling values in Appendix C to part 101 provide serving sizes for each fruit and vegetable that is expressed in a visual unit of measure (e.g., 1 medium apple; 2 slices pineapple; 5 spears asparagus; 1/2 medium summer squash; 1 medium, 5′ long, 2′ diameter sweet potato), as well as the gram and ounce equivalent. Visual units of measure vary and are not intended to be precise. We expect that consumers will treat them as an approximation but will also have the option of referring to the gram and ounce serving size measures if greater precision is needed.

c. *Adjusting Values for Total Carbohydrate.*

(Comment 19) One comment objected to FDA adjusting the total carbohydrate values where the sum of sugars and dietary fiber exceeded the value for total carbohydrate. The comment stated that the sugar value should be adjusted when sugars and fibers exceed total carbohydrate, and the sugar values are from a different source than the proximate, fiber, and other nutrient values. This, the comment stated, would more accurately represent the sugar and carbohydrate content, as well as the caloric value, of the samples from which most of the nutrition labeling values have been derived.

(Response) We disagree that the sugars value should be adjusted. The sum of the sugars and dietary fiber values, which were derived from analytical data submitted by USDA, exceeded the value for total carbohydrate for cantaloupe, honeydew melon, and watermelon. For these foods only, we adjusted the value for total carbohydrate to reflect the sum of sugars and dietary fiber. As stated in the 2002 proposed rule, we consider this adjustment to be appropriate because the values for sugars and dietary fiber are determined by laboratory analysis, and therefore, are more accurate than the value for total carbohydrate, which is determined ''by difference'' (i.e., the weight remaining after subtracting the sum of the protein, fat, moisture, and ash from the total weight of the food (§ 101.9(c)(6))).

2. Nutrition Labeling of Raw Fruits and Vegetables

In the 2002 proposed rule, FDA updated nutrition labeling values for 12 of the 20 raw fruits and 9 of the 20 raw vegetables. We used new data for six of the fruits from the California Avocado Commission (CAC); the California Table Grape Commission; the California Tree Fruit Agreement (CTFA) for peach, plums, and nectarine; and the California Cherry Advisory Board for fat in sweet cherries. We also used new data for four vegetables from the National Potato Protection Board and the USDA NNDB for green onion, sweet corn, and sweet potatoes. In other nutrition label changes, we corrected slight errors in sugars, total carbohydrate, calories, and calories from fat values in a few fruits and vegetables (cantaloupe, orange, strawberries, sweet cherries, tangerine, watermelon, asparagus, celery, green (snap) beans, and tomato) and corrected the serving size for grapefruit, carrot, and sweet potato.

As indicated in section II.B of this final rule, USDA submitted data in response to the 2002 proposed rule from its 2001–2002 nationwide sampling study of fruits and vegetables, which it incorporated into its NNDB and SR, for 16 of the 20 most frequently consumed raw fruits (apple, avocado (California), banana, cantaloupe, grapefruit, honeydew melon, kiwifruit, nectarine, orange, peach, pear, pineapple, plums, strawberries, sweet cherries, and watermelon) and 12 of the 20 most frequently consumed raw vegetables (bell pepper, broccoli, carrot, celery, cucumber, iceberg lettuce, leaf lettuce, onion, potato, radish, sweet potato, and

tomato). At the time USDA submitted the comment, the data results for vitamin C, sodium, and potassium were not yet available, and the analysis of carotenoids for carrots, sweet potatoes, cucumbers, onions, and sweet peppers had not been completed. In June and July of 2003, after the close of the comment period, USDA provided sodium, potassium, and some carotenoid values that it did not submit earlier, including vitamin C values for pineapple. In other comments to the 2002 proposed rule, the Citrus Research Board and Food Research, Inc., provided nutrient data from 1998 for oranges, grapefruit, tangerines (Mandarin oranges), and lemons. We used all of the new data to update the nutrition labeling values in the 2005 reopening of the comment period.

In response to the 2005 reopening of the comment period, the Pear Bureau Northwest submitted market share data for four varieties of pears; USDA submitted data for raw mushrooms; Food Research, Inc., submitted data for total fat in kiwifruit; and the California Strawberry Commission (CSC) submitted data for sugars, calcium, and iron in strawberries. After the close of the comment period, the U.S. Apple Association (USApple) submitted data for fiber and new serving size information. We considered all data submitted in response to the 2005 reopening of the comment period and used those data to update the nutrition labeling values for raw fruits and vegetables in this final rule. The following will address individual fruits and vegetables for which we received data in response to the 2005 reopening of the comment period.

a. *Apple*.

(Comment 20) USApple requested that FDA use its new serving size information and new data for dietary fiber for five varieties of apples (Red Delicious, Golden Delicious, Granny Smith, Gala, and Fuji) in updating the nutrient values for apples. USApple stated that based on current market data, retailers are selling significantly larger apples than those represented by the existing serving size of 154 g or 5.5 oz edible portion, which is based on 1975 market data. They noted that the 154 g serving size for apples does not reflect the majority of apples for sale in the retail market and that a large apple (264 g whole, 242 g edible portion) is customarily consumed in the United States. They stated apple growers have adapted to consumers' tastes and preferences by growing and marketing larger apples, and, as a result, apple production and the apple market have changed significantly. In addition, only small and large apple sizes exist in today's marketplace. There is no inventory management or price look-up (PLU) sticker that designates a ''medium'' size apple at the retail level, and smaller apples typically go to processing. USApple recommended that a large apple (242 g edible portion) should be listed as the serving size.

(Response) We agree with the USApple request. We are convinced by the data submitted by USApple that ''1 large (242 g/8 oz)'' better represents the serving size for apple. Thus, we combined the data for dietary fiber from the USApple research study (n=8) with data provided by USDA for the same five varieties of apples in response to the 2002 proposed rule (n=15) and conducted weighted compliance calculations of all nutrients based on market share using 95 percent prediction intervals (Ref. 7). Based upon our analysis of the data, we determined that there would be changes in nutrition labeling values for calories (130 from 80), potassium (260 milligrams (mg), 7 percent daily value (DV), from 160 mg, 5 percent DV), total carbohydrate (34 g, 11 percent DV, from 21 mg, 7 percent DV), dietary fiber (5 g, 20 percent DV, from 3 g, 12 percent DV), sugars (25 g from 16 g), protein (1 g from 0 g), calcium (2 percent DV from 0 percent DV), and iron (2 percent DV from 0 percent DV). Table 1 of this document includes changes in nutrition labeling values for apples, and Appendix C to part 101 provides the listing of all values.

TABLE 1.—CHANGES TO THE NUTRITION LABELING INFORMATION FOR RAW FRUITS AND VEGETABLES

Food and Nutrient	2005 Reopening Comment Period Values		Final Rule Values	
		% DV		% DV
Apples (242 g)	(154 g)		(242 g)	
Calories	80		130	
Potassium	160 mg	5%	260 mg	7%
Total Carbohydrate	21 mg	7%	34 mg	11%
Dietary Fiber	3 g	12%	5 g	20%
Sugars	16 g		25 g	
Protein	0 g		1 g	
Calcium		0%		2%
Iron		0%		2%
Avocado (30 g)				
Calories from Fat	45 g		35	
Total Fat	5 g	8%	4.5 g	7%
Saturated Fat	1 g	5%	0.5 g	3%
Total Carbohydrate	2 g	1%	3 g	1%
Iron		0%		2%
Banana (126 g)				
Sodium	5 mg	0%	0 mg	0%
Dietary Fiber	2 g	8%	3 g	12%
Vitamin A		0%		2%
Cantaloupe (134 g)				
Calcium		0%		2%
Honeydew melon (134 g)				
Calcium		0%		2%
Kiwifruit (148 g)				

TABLE 1.—CHANGES TO THE NUTRITION LABELING INFORMATION FOR RAW FRUITS AND VEGETABLES—Continued

Food and Nutrient	2005 Reopening Comment Period Values		Final Rule Values	
		% DV		% DV
Total Fat	1.5 g	2%	1 g	2%
Lemon (58 g)				
Dietary Fiber	1 g	4%	2 g	8%
Nectarine (140 g)				
Dietary Fiber	1 g	4%	2 g	8%
Orange (154 g)				
Vitamin A		0%		2%
Pear (166 g)				
Potassium	180 mg	5%	190 mg	5%
Total Carbohydrate	25 g	8%	26 g	9%
Dietary Fiber	4 g	16%	6 g	24%
Protein	0 g		1 g	
Calcium		0%		2%
Pineapple (112 g)				
Iron		0%		2%
Plums (151 g)				
Dietary Fiber	1 g	4%	2 g	8%
Iron		0%		2%
Strawberries (147 g)				
Sugars	6 g		8 g	
Calcium		0%		2%
Iron		0%		2%
Tangerine (109 g)				
Sodium	5 mg	0%	0 g	0%
Broccoli (148 g)				
Total Carbohydrate	10 g	3%	8 g	3%
Protein	2 g		4 g	
Iron		4%		6%
Carrot (78 g)				
Iron		0%		2%
Celery (110 g)				
Dietary Fiber	1 g	4%	2 g	8%
Cucumber (99 g)				
Calories	15		10	
Total Carbohydrate	3 g	1%	2 g	1%
Sugars	2 g		1 g	
Protein	0 g		1 g	
Green Onion (25 g)				
Iron		0%		2%
Leaf Lettuce (85 g)				
Calcium		4%		2%
Mushrooms (84 g)				
Sodium	0 g	0%	15 g	0%
Onion (148 g)				
Potassium	160 mg	5%	190 g	5%
Calcium		2%		4%
Radishes (85 g)				
Potassium	160 mg	5%	190 mg	5%
Tomato (148 g)				
Sodium	35 mg	1%	20 mg	1%

b. *Avocado.*

(Comment 21) In comments submitted in response to the 2005 reopening of the comment period, CAC requested that FDA establish a nutrition labeling value of 0.5 g for saturated fat, 2 g for dietary fiber, and 150 mg for potassium.

CAC also submitted a comment in response to the 2002 proposed rule stating that it is well established that the fat content of an avocado varies and increases throughout the season and asked that we consider seasonal data in determining the content of fat. To support their request, CAC also noted that the State of California regulates the percent oil (fat) that must be present in an avocado before it can be sold. Not only does the fat content vary throughout the season, but as with many fruit crops, avocado sales start slow, build and then decline at the end of the season. Seasons and corresponding market share for avocado include: Primary season (January through September), 93 percent of crop; pre-season (November and December), 2.4 percent of crop; and post-season (October), 4.6 percent of crop.

(Response) We agree with the comment on the seasonal variation of fat in avocados and reevaluated the total fat and saturated fat levels for this final rule. We used the seasonal market share data that CAC provided along with their nutrient data, combined these data with those provided by USDA in response to the 2002 proposed rule, and conducted weighted compliance calculations based on 95 percent prediction intervals (Ref. 8). The resulting nutrition labeling value for saturated fat is 0.5 g. In addition, we found that other nutrient levels changed from those we published in the reopening of the comment period for total fat (4.5 g, 7 percent DV, from 5 g, 8 percent DV), calories from fat (35 from 45), total carbohydrate (3 g, 1 percent DV, from 2 g, 1 percent DV), and iron (2 percent DV from 0 percent DV).

We have also provided a correction in this final rule in § 101.45(a)(3)(iii) that ''* * * avocados contain 1 gram (g) of fat per ounce'' should read ''* * * avocados contain 0.5 gram (g) of saturated fat per ounce.'' In addition, we have revised the footnote that follows in § 101.45(a)(3)(iii) that states ''avocados provide 1 g of saturated fat per ounce'' to read ''avocados provide 0.5 g of saturated fat per ounce.''

We will make no changes to the nutrition labeling values for dietary fiber and potassium. We completed weighted compliance calculations based on 95 percent prediction intervals with nutrient data submitted by CAC and USDA, and determined that the 95 percent predicted value for dietary fiber fell outside the interval of the raw data points. We selected the mean value for dietary fiber, with a resulting nutrition labeling value of 1 g. For potassium, the 95 percent predicted value of 142.9 mg fell within the interval of the raw data points, so we selected the rounded value of 140 mg for nutrition labeling. Thus, FDA calculated final values for dietary fiber and potassium, in accord with the statistical methods described in the 2002 proposed rule, the 2005 reopening of the comment period, and in response to comments in this final rule. Table 1 of this document includes all changes in nutrition labeling values for avocado, and Appendix C to part 101 provides the listing of all values.

c. *Banana.*

(Comment 22) The International Banana Association (IBA), in response to the 2005 reopening of the comment period, questioned the accuracy of FDA's calculations for the 95 percent prediction intervals for bananas. Specifically, IBA recommended that the nutrition labeling values for sodium, dietary fiber, and sugars be 0 mg, 3 g, and 16 g, respectively.

(Response) We agree that the nutrition labeling values for sodium and dietary fiber in banana should be changed to the levels recommended by IBA (0 mg from 5 mg for sodium, and 3 g, 12 percent DV, from 2 g, 8 percent DV for dietary fiber) (Ref. 9). Based upon our review of the USDA data submitted in response to the 2002 proposed rule and reassessment of 95 percent prediction intervals, as discussed in section II.K.3 of this document, we determined that there would be changes in the values for sodium, fiber, and vitamin A (2 percent DV from 0 percent DV). However, we did not find reason to change the nutrition labeling value for sugars and have not changed the 19 g listed in Appendix C to part 101. Table 1 of this document provides changes in nutrition labeling values for banana, and Appendix C to part 101 lists all values.

d. *Kiwifruit.*

(Comment 23) Food Research Inc., on behalf of kiwifruit growers that combined represent an estimated 98.75 percent of all kiwifruit sold in the United States, recommended that FDA label total fat as 0.5 g (1 percent DV) per serving. The comment stated that because a large coefficient of variation due to two high values in the USDA data raise uncertainties, and because so much of the sample information, country of origin, and method of analysis were not reported, it would be more appropriate to use the results of the Food Research Inc., study for the basis of labeling total fat. In support of their request, the comment provided nutrient data for total fat in kiwifruit from three of the countries they represent, which account for 88 percent of the kiwifruit sold in the United States (Chile, the United States (California), and New Zealand).

(Response) We do not agree with the 0.5 g (1 percent DV) total fat value recommended by the comment. We combined the data for total fat from the kiwifruit research study (n=6) to data provided by USDA in response to the 2002 proposed rule (n=8) and conducted weighted compliance calculations based on 95 percent prediction intervals (Ref. 10). The resulting nutrition labeling values for total fat are 1 g, 2 percent DV, a change from the 1.5 g, 2 percent DV published in the 2005 reopening of the comment period (see table 1 of this document). Appendix C to part 101 provides the listing of all nutrition labeling values for kiwifruit.

e. *Pear.*

(Comment 24) The Pear Bureau Northwest (Pear Bureau) submitted market share data for four varieties of pears and requested that FDA use these data to weight the nutrient data submitted by USDA in response to the 2002 proposed rule. The varieties and market share include Bartlett (37 percent), Bosc (17 percent), Green Anjou (2 percent), and Red Anjou (28 percent), accounting for 84 percent of fresh pears sold domestically. The Pear Bureau requested nutrition labeling values for dietary fiber and total carbohydrate be updated to 5 g and 26 g, respectively.

(Response) We agree that the market share data submitted by the Pear Bureau should be used to weight the nutrient data for pears. We reviewed the market share data for pears submitted by the Pear Bureau and used their market share percentages to weight USDA nutrient data for the four varieties of pears and derive nutrition labeling values using compliance calculations based on 95 percent prediction intervals (Ref. 11). The resulting nutrition labeling values include changes for potassium (190 mg from 180 mg, both 5 percent DV), total carbohydrate (26 g, 9 percent DV, from 25 g, 8 percent DV), dietary fiber (6 g, 24 percent DV, from 4 g, 16 percent DV), protein (1 g from 0 g), and calcium (2 percent DV from 0 percent DV). Table 1 of this document includes changes in nutrition labeling values for pear, and Appendix C to part 101 provides the listing of all values.

f. *Strawberries.*

(Comment 25) CSC requested nutrition labeling values of 8 g for sugars and 2 percent DV for calcium and iron. In support of their request, CSC submitted the results of analytical

research conducted by Food Research, Inc., to determine the sugars, calcium, and iron content of fresh strawberries. Twelve 16-oz containers or six 32-oz containers of four brands of strawberries were purchased in May 2005 and delivered on the same day to the laboratory for analysis.

(Response) We agree with the changes recommended by CSC. We have evaluated the CSC nutrient data, combined those data with the data USDA submitted in response to the 2002 proposed rule, and conducted weighted compliance calculations based on 95 percent intervals (Ref. 12). The resulting nutrition labeling value for sugars is 8 g (from 6 g) and for calcium and iron is 2 percent DV (from 0 percent DV). Table 1 of this document includes changes in nutrition labeling values for strawberries, and Appendix C to part 101 provides the listing of all values.

g. *Potato.*

(Comment 26) The U.S. Potato Board (USPB) commented, in response to the 2002 proposed rule, that the 2000 market basket data that Ketchum (a public relations firm) submitted to FDA on their behalf and that FDA used in proposing to update the nutrition labeling values for potatoes in the 2002 proposed rule should not be used because the data contain inaccuracies due to unusually high moisture content and did not represent the average potato that a consumer would eat. USPB recommended that FDA use the preliminary data that USDA submitted in response to the 2002 proposed rule, as those data were more in line with the nutrition labeling values for potato. USPB also noted that the data in the current USDA SR are more appropriate for labeling purposes than the data that they submitted and that we used in the 2002 proposed rule. USPB also, in response to the 2005 reopening of the comment period, requested that FDA retain the current nutrition labeling and not use the values that FDA published in the 2005 reopening of the comment period document, which were derived from the new data that USDA submitted in response to the 2002 proposed rule. USPB said they saw no compelling reason to have one set of data negatively impact a nutrition label that has been acceptable to FDA for the past 10 years.

(Response) We disagree with the comment. We have determined that the Produce Marketing Association nutrient data we used to support the nutrition labeling values for potato in the 1996 final rule were based upon nutrient data analyzed in 1983 and 1984 and are not likely to be valid because they are outdated. In the 2005 reopening of the comment period, we used new nutrient data for four types of potatoes that USDA submitted in response to the 2002 proposed rule, and conducted compliance calculations based on 95 percent prediction intervals to determine nutrition labeling values (Ref. 13). Having received no additional nutrient data for potato, we are using these nutrition labeling values in Appendix C to part 101 to replace the nutrient data that are more than 20 years old.

3. Changes to Nutrition Labeling Values Based Upon Reassessment of 95 Percent Prediction Intervals

As indicated in section II.K.1.a of this final rule, upon completion of all statistical analyses to calculate compliance calculations based on 95 percent prediction intervals (Refs. 7 through 19), we reviewed all nutrient data for all foods to determine if the 95 percent predicted value fell within the range of the interval of all raw data points for each nutrient and food. If the nutrient level derived from the 95 percent prediction interval was selected as the more appropriate nutrient value (versus the mean), and that level fell within the interval of all raw data points, then we determined it would be a reasonable choice to represent the nutrient for the raw food. However, if the nutrient level based on the 95 percent prediction interval did not fall within the interval of all raw data points, we determined the mean would be a better estimate of the nutrient level for the raw food. As a result of the reassessment of all nutrient levels based on 95 percent prediction intervals, we updated the nutrient values for 11 of the raw fruits and 9 of the raw vegetables: Avocado (iron), banana (sodium, dietary fiber, vitamin A), cantaloupe (calcium), honeydew melon (calcium), lemon (dietary fiber), nectarine (dietary fiber), orange (vitamin A), pineapple (iron), plums (dietary fiber, iron), strawberries (calcium, iron), tangerine (sodium), broccoli (total carbohydrate, protein, iron), carrot (iron), celery (dietary fiber), cucumber (calories, total carbohydrate, protein), green onion (iron), mushrooms (sodium), onion (potassium, calcium), radishes (potassium), and tomato (sodium). These changes are listed among changes to nutrition labeling values in table 1 of this document.

4. Summary of Changes for Fruits and Vegetables

Table 1 of this document shows a summary of the changes from the nutrition labeling values for 25 raw fruits and vegetables for this final rule versus those published in the 2005 reopening of the comment period.

L. Nutrition Labeling of Raw Fish

For the 2002 proposed rule, we obtained new data from USDA NNDB for cooked Atlantic salmon and rainbow trout and for the following raw fish: Catfish (only on fat content), flounder/sole, orange roughy, coho and sockeye salmon, shrimp, swordfish, tilapia, and tuna. We also obtained new information on the cooking yield for mollusks, discovered a slight error in the raw weight used to calculate the nutrient values for finfish and crustaceans, and obtained new data on nutrient retention factors. Therefore, in addition to updating the nutrient values based on new data, we reanalyzed the data from USDA NNDB for the remaining fish and adjusted the nutrient values accordingly (Ref. 20).

Chinook Salmon

(Comment 27) As indicated in section II.J.2 of this document, two comments recommended that FDA include Chinook salmon along with Atlantic, coho, and sockeye salmon and use USDA nutrient data to support nutrition labeling.

(Response) We obtained data for Chinook salmon (raw) from the USDA NNDB and added those data to the USDA NNDB data we already had for Atlantic salmon (cooked, farmed); coho salmon (raw, farmed); sockeye salmon (raw). We subjected the data to FDA compliance calculations where possible using 95 percent prediction intervals and used the data in deriving the nutrition labeling values for these fish (Ref. 20).

There were no changes in nutrition labeling values for fish in this final rule as compared with those in the 2005 reopening of the comment period. Appendix D to part 101 contains a comprehensive listing of all raw fish and all nutrients in the voluntary nutrition labeling program.

M. Effective Date

(Comment 28) One comment opposed the proposed changes because they will result in unnecessary reprinting costs to industry and those producing nutrition education materials.

(Response) FDA periodically establishes, by final rule in the **Federal Register**, uniform effective dates for compliance with food labeling regulations (see, e.g., the **Federal Register** of December 23, 1998 (63 FR 71015)). This final rule will become effective in accordance with the uniform effective date for compliance with food labeling requirements, which is January 1, 2008. However, we will not object to voluntary compliance immediately upon publication of the final rule. We

believe that the effective date should allow industry and nutrition educators adequate time to update nutrition labeling information.

III. Final Regulatory Impact Analysis

FDA has examined the impacts of the final rule under Executive Order 12866. Executive Order 12866 directs agencies to assess all costs and benefits of available regulatory alternatives and, when regulation is necessary, to select regulatory approaches that maximize net benefits (including potential economic, environmental, public health and safety, and other advantages; distributive impacts; and equity). The agency believes that this final rule is not a significant regulatory action under the Executive order.

Option 1 of this document is for no new regulatory action, and provides the baseline with which all other options are compared. Option 2 of this document is for the provision of updated nutrition information based on the current data and methodology for computation.

Option 1: No New Regulatory Action

There would be no costs or benefits if no new regulatory action were taken to update the nutrition information for the 20 most frequently consumed raw fruits, vegetables, and fish.

Option 2: Costs of Updated Guidelines

We anticipate, as a result of these guidelines, that some firms will expend resources to redesign signs near produce items at retail outlets. These expenditures will be voluntary, and we assume that no firms will make them if they do not judge that it is in their best interests to do so. These are considered in this analysis in order to quantify the extent to which nutrition updates likely influence resource expenditures.

While there were no comments on the estimate costs in the proposed guidelines, we used 2003 County Business Pattern (CBP) data (Ref. 21) collected by the U.S. Census Bureau to update estimates of the number of firms that will voluntarily change signs because of these guidelines. There are approximately 67,000 supermarkets under the North American Industry Classification System (NAICS) code 44511, approximately 2,000 fish and seafood markets under NAICS 44522, approximately 3,000 fruits and vegetables markets under NAICS 44523, and approximately 15,000 other specialty markets under NAICS 44529. We assume that many of the markets in NAICS codes 44522, 44523, and 44529 have annual sales of less than $500,000 and therefore have been exempted by Congress from coverage by these guidelines. We use the number of supermarkets in NAICS 44511 as a low estimate of the number of establishments under consideration, and all establishments in NAICS codes 44522, 44523, and 44529 as well as 44511 as an upper bound. Based on the most recent survey of adoption of our guidelines, we assume that 72 percent of establishments (between 48,000 and 63,000 establishments) will continue to choose to follow these guidelines.

We estimated the total voluntary expenditures using the revised number of establishments, and the assumptions of expenditure per establishment. Consistent with the methodology used in the 2002 proposed rule, we assume a normal cycle for retailers to redesign their labels to be once every 3 years, and that one-half of the 48,000 to 68,000 stores would redesign after the third year following publication of these guidelines. The updating cost expenditures for a partial redesign, incurred in the first and second years, are assumed to be $50 per store, and the updating costs of a full redesign, incurred in the third year, are assumed to be $100 per store. Table 2 of this document shows these assumptions and estimates. We compute the present value of total expenditures for each year using both a 7 percent and 3 percent discount rate. The present value of the total of voluntary expenditures is between $3,257,000 for the low estimate assuming a 7 percent discount rate, and $4,593,000 for the high assuming a 3 percent discount rate (i.e., the sum of the present values of the expenditures in rows (e) and (f) of table 2 of this document for 2006, 2007, and 2008).

TABLE 2.—ADOPTION SCHEDULE AND VOLUNTARY EXPENDITURES

	Adoption Schedule and Voluntary Expenditures		
(a) Adoption Year	2006	2007	2008
(b) Number of Stores	12,000 to 16,000	12,000 to 16,000	24,000 to 32,000
(c) Expenditures per Store	$50	$50	$100
(d) Total Expenditures	$600,000 to $800,000	$600,000 to $800,000	$2,400,000 to $3,200,000
(e) Present Value (assuming a 7% discount rate)	$600,000 to $800,000	$561,000 to $736,000	$2,096,000 to $2,800,000
(f) Present Value (assuming a 3% discount rate)	$600,000 to $800,000	$582,000 to $761,000	$2,262,000 to $2,970,000

Option 2: Benefits of the Updated Guidelines

The benefits from updating nutrition information on the 20 most frequently consumed raw fruits, vegetables, and fish derive from maintaining the accuracy of the information over the long term, and giving consumers current information to use in making healthful dietary choices. The larger the difference between the updated information and the current information, the more likely that consumption behavior will change if consumers are aware of the changes made in this final rule. A greater change in behavior is likely to provide greater potential for improved dietary choices.

The potential for this particular update to improve dietary choices is likely to be small since modest changes in the nutrient profile of a food are likely to have a small influence on the demand for that food. Table 3 of this document summarizes the extent of changes in foods and the nutrient profiles in the proposed and final rules.

TABLE 3.—CHANGES TO GUIDELINES IN PROPOSED RULE AND FINAL RULE

	Changes to Guidelines in Proposed Rule[1]		Changes to Guidelines in Final Rule[2]
	Fruits and Vegetables	Fish	Fruits and Vegetables
No. of foods with changes	21	21	20
No. of nutrients with changes	40	107	38

[1]Computed from values in tables 1 and 2 of the 2002 proposed rule.
[2]Computed from the values in this final rule.

The substantial changes made in this final rule to the current nutrition information indicate the importance of updates in nutrition information. We proposed changes for approximately one-half of all of the most frequently consumed varieties of fruits, vegetables, and fish, with an average number of revisions to nutrient information per food item of approximately two for fruits and vegetables (i.e., 40 nutrients / 21 whole food items) and approximately five for fish (i.e., 107 nutrients / 21 whole food items). The guidelines in this final rule contain additional revisions for one-half of all of the most frequently consumed fruits and vegetables, with an average of approximately 2 revised nutrients per revised food item (i.e., 38 nutrients / 20 whole food items).

Consumers may use this updated information in making their dietary choices. If they use it, the updated information will allow them to be more effective at achieving the results that they intend than if they were using outdated information. We are not able to quantify the benefit that having this updated information will provide.

Because only substantial compliance with these guidelines is mandated by the statute, aggregate costs may be less than would occur if they were mandatory for all establishments. Moreover, confusion on the part of consumers may arise during the transition period as retail stores adopt these guidelines at different times. Confusion may arise, for example, if one store displayed an updated set of nutrient values while another store displayed an out-dated set of nutrient values for otherwise identical raw fruits, vegetables, or fish. Any such confusion will reduce the benefit of updating the values in these guidelines.

As discussed previously in this document, the unquantified benefits of providing accurate information for consumers to use in making their dietary choices are believed to outweigh the costs associated with this rule.

IV. Final Regulatory Flexibility Analysis

FDA has examined the impacts of the final rule under the Regulatory Flexibility Act (5 U.S.C. 601–612). The Regulatory Flexibility Act requires agencies to analyze regulatory options that would minimize any significant impact of a rule on small entities. Although many of the estimated 48,000 to 63,000 stores that may choose to update their nutrition displays are small entities, because these guidelines are voluntary, no small entity would be required to display the information set forth here. Consequently, the agency certifies that the final rule will not have a significant economic impact on a substantial number of small entities.

V. Unfunded Mandates

FDA has examined the impacts of the final rule under the Unfunded Mandates Reform Act of 1995 (Public Law 104–4). Section 202(a) of the Unfunded Mandates Reform Act of 1995 requires that agencies prepare a written statement, which includes an assessment of anticipated costs and benefits, that includes any ''Federal mandate that may result in the expenditure by State, local, and tribal governments, in the aggregate, or by the private sector, of $100,000,000 or more (adjusted annually for inflation) in any one year.'' The current threshold after adjustment for inflation is $115 million, using the most current (2003) Implicit Price Deflator for the Gross Domestic Product. FDA does not expect this final rule to result in any 1-year expenditure that would meet or exceed this amount.

VI. Small Business Regulatory Enforcement Fairness Act of 1996 (SBREFA)

SBREFA (Public Law 104–121) defines a major rule for the purpose of congressional review as having caused or being likely to cause one or more of the following: An annual effect on the economy of $100 million or more; a major increase in costs or prices; significant adverse effects on competition, employment, productivity, or innovation; or significant adverse effects on the ability of U.S.-based enterprises to compete with foreign-based enterprises in domestic or export markets. In accordance with SBREFA, OMB has determined that this final rule is not a major rule for the purpose of congressional review.

VII. Paperwork Reduction Act of 1995

FDA concludes that this final rule contains no collection of information. Therefore clearance by OMB under the Paperwork Reduction Act of 1995 is not required.

VIII. Analysis of Environmental Impact

We have determined under 21 CFR 25.30(k) that this action is of a type that does not individually or cumulatively have a significant effect on the human environment. Therefore, neither an environmental assessment nor an environmental impact statement is required.

IX. Federalism

FDA has analyzed this final rule in accordance with the principles set forth in Executive Order 13132. FDA has determined that the rule will have a preemptive effect on State law. Section 4(a) of the Executive order requires agencies to ''construe * * * a Federal statute to preempt State law only where the statute contains an express preemption provision or there is some other clear evidence that the Congress intended preemption of State law, or where the exercise of State authority conflicts with the exercise of Federal authority under the Federal statute.'' Section 403A of the act (21 U.S.C. 343–1) is an express preemption provision. Section 403A(a)(4) of the act provides that ''no State or political subdivision of a State may directly or indirectly establish under any authority or continue in effect as to any food in interstate commerce— * * * (4) any requirement for the voluntary nutrition labeling of food that is not identical to the requirement of section 403(q).''

Currently, this provision operates to preempt States from imposing nutrition labeling requirements for raw fruits, vegetables, and fish because no such requirement had been imposed by FDA

under section 403(q) of the act. This final rule amends existing food labeling regulations by updating the names and the nutrition labeling values for the 20 most frequently consumed raw fruits, vegetables, and fish in the United States and by revising the guidelines for further clarity and consistency. Although this rule would have a preemptive effect, in that it would preclude States from issuing any nutrition labeling requirements for raw fruits, vegetables, and fish that are not identical to those required by this final rule, this preemptive effect is consistent with what Congress set forth in section 403A of the act. Section 403A(a)(5) of the act displaces both State legislative requirements and State common law duties.

FDA believes that the preemptive effect of the final rule would be consistent with Executive Order 13132. Section 4(e) of the Executive Order provides that ''when an agency proposes to act through adjudication or rulemaking to preempt State law, the agency shall provide all affected State and local officials notice and an opportunity for appropriate participation in the proceedings.'' FDA provided the States with an opportunity for appropriate participation in this rulemaking when it sought input from all stakeholders through publication of the proposed rule in the **Federal Register** of March 20, 2002 (67 FR 12918), and the reopening of the comment period on April 4, 2005 (70 FR 16995). FDA received no comments from any States on the proposed rulemaking.

In addition, on May 16, 2006, FDA's Division of Federal and State Relations provided notice via fax and e-mail transmission to State health commissioners, State agriculture commissioners, food program directors, and drug program directors as well as FDA field personnel of FDA's intended final rule to update the guidelines for the voluntary nutrition labeling of raw fruits, vegetables, and fish. The notice provided the States with further opportunity for input on the rule. It advised the States of the publication of the final rule and encouraged State and local governments to review the notice and to provide any comments to the docket (Docket No. 2001N–0548) by June 28, 2006, or to contact certain named individuals. FDA received no comments in response to this notice. The notice has been filed in the above numbered docket.

In conclusion, the agency believes that it has complied with all of the applicable requirements under the Executive order and has determined that the preemptive effects of this rule are consistent with Executive Order 13132.

X. References

The following references have been placed on display in the Division of Dockets Management (HFA–305), Food and Drug Administration, 5630 Fishers Lane, rm. 1061, Rockville, MD 20852 and may be seen by interested persons between 9 a.m. and 4 p.m., Monday through Friday. (FDA has verified the Web site addresses, but we are not responsible for subsequent changes to the Web sites after this document publishes in the **Federal Register**.)

1. U.S. Department of Agriculture, Agricultural Research Service, USDA Nutrient Database for Standard Reference, Release 18, 2005. Available on the Internet at USDA's Nutrient Data Laboratory Home Page, *http://www.ars.usda.gov/main/site_main.htm?modecode=12354500*.

2. U.S. Department of Agriculture, National Nutrient Data Bank, maintained at the Nutrient Data Laboratory, Agricultural Research Service, Beltsville Human Nutrition Research Center, Beltsville, MD.

3. Bender, M. M., J. I. Rader, and F. D. McClure, ''Guidance for Industry, FDA Nutrition Labeling Manual—A Guide for Developing and Using Databases,'' Center for Food Safety and Applied Nutrition, FDA, 1998. Available on the Internet at *http://vm.cfsan.fda.gov/dms/nutrguid.html*.

4. U.S. Department of Health and Human Services and U.S. Department of Agriculture, *Dietary Guidelines for Americans, 2005*, 6th ed. Washington DC: U.S. Government Printing Office, January, 2005. Available on the Internet at *http://www.healthierus.gov/dietaryguidelines/*.

5. Retail Diagnostics, Inc., *Food and Drug Administration Nutrition Labeling Information Study December 1996*, Oradell, NJ, March 10, 1997.

6. Brandt, M. M. ''Documentation for the Nutrition Labeling Values for the 20 Most Frequently Consumed Raw Fruits, Vegetables, and Fish,'' Center for Food Safety and Applied Nutrition, FDA, January 2006.

7. O'Neill, K. R., ''Statistical Derivation of Nutrition Label for Raw Apples from 2001–2002 United States Department of Agriculture (USDA) Agricultural Research Service (ARS) Nutrient Data Laboratory (NDL) Data and U.S. Apple Association Data for Raw Red Delicious, Golden Delicious, Granny Smith, Gala, and Fuji Apples by Weighting by Market Share,'' Center for Food Safety and Applied Nutrition, FDA, 2006.

8. O'Neill, K. R., ''Statistical Derivation of Raw Avocado Nutrition Label for Appendix C to Part 101: Nutrition Facts for Raw Fruits and Vegetables,'' Center for Food Safety and Applied Nutrition, FDA, 2005.

9. O'Neill, K. R., ''Statistical Derivation of Nutrition Labels for Raw Banana, Raw Cantaloupe, Raw Sweet Cherries, Raw Honeydew Melon, and Raw Watermelon from 2001–2002 United States Department of Agriculture (USDA) Agricultural Research Service (ARS) Nutrient Data Laboratory (NDL) Data under the Assumption of Simple Random Sample (SRS),'' Center for Food Safety and Applied Nutrition, FDA, 2005.

10. O'Neill, K. R., ''Statistical Derivation of Nutrition Label for Raw Kiwifruit from 2001–2002 United States Department of Agriculture (USDA) Agricultural Research Service (ARS) Nutrient Data Laboratory (NDL) and 2005 Food Research Institute, Inc. (FRI) Data Weighted by Variability,'' Center for Food Safety and Applied Nutrition, FDA, 2005.

11. O'Neill, K. R., ''Statistical Derivation of Nutrition Label for Raw Pears from 2001–2002 United States Department of Agriculture (USDA) Agricultural Research Service (ARS) Nutrient Data Laboratory (NDL) Data for Raw Bartlett, Bosc, Red Anjou, and Green Anjou Pears by Weighting by Market Share,'' Center for Food Safety and Applied Nutrition, FDA, 2005.

12. O'Neill, K. R., ''Statistical Derivation of Nutrition Label for Raw Strawberries from 2001–2002 United States Department of Agriculture (USDA) Agricultural Research Service (ARS) Nutrient Data Laboratory (NDL) and 1999–2000 California Strawberry Commission (CSC) Data Weighted by Variability,'' Center for Food Safety and Applied Nutrition, FDA, 2005.

13. O'Neill, K. R., ''Statistical Derivation of Nutrition Label for Raw Potatoes from 2001–2002 United States Department of Agriculture (USDA) Agricultural Research Service (ARS) Nutrient Data Laboratory (NDL) Data for Raw Russet, White, and Red Potatoes by Weighting by Market Share,'' Center for Food Safety and Applied Nutrition, FDA, 2005.

14. O'Neill, K. R., ''Statistical Derivation of Nutrition Labels for Raw Broccoli, Raw Carrots, Raw Celery, Raw Cucumber, Raw Green Pepper, Raw Iceberg Lettuce, Raw White Mushrooms, Raw Yellow Onions, Raw Radishes, Raw Sweet Potatoes, and Raw Tomatoes Derived from 2001–2002 United States Department of Agriculture (USDA) Agricultural Research Service (ARS) Nutrient Data Laboratory (NDL) Data under the Assumption of Simple Random Sample (SRS),'' Center for Food Safety and Applied Nutrition, FDA, 2005.

15. O'Neill, K. R., ''Statistical Derivation of Nutrition Label for Raw Yellow Nectarines, Raw Yellow Peaches, and Raw Plums from 2001–2002 United States Department of Agriculture (USDA) Agricultural Research Service (ARS) Nutrient Data Laboratory (NDL) Data and 1999–2000 California Tree Fruit Agreement (CTFA) Data Weighted by Variability,'' Center for Food Safety and Applied Nutrition, FDA, 2005.

16. O'Neill, K. R., ''Statistical Derivation of Nutrition Label for Raw Pineapples from 2001–2002 United States Department of Agriculture (USDA) Agricultural Research Service (ARS) Nutrient Data Laboratory (NDL) Data by Weighting by Market Share,'' Center for Food Safety and Applied Nutrition, FDA, 2005.

17. O'Neill, K. R., ''Statistical Derivation of Nutrition Label for Raw Leaf Lettuce from 2001–2002 United States Department of Agriculture (USDA) Agricultural Research Service (ARS) Nutrient Data Laboratory (NDL) Data for Raw Red and Green Leaf Lettuce Weighted by Variability,'' Center for

Food Safety and Applied Nutrition, FDA, 2005.

18. O'Neill, K. R., ''Statistical Derivation of Nutrition Label for Raw Lemons and Tangerines from 1989–1991 Produce Marketing Association (PMA) and 1998 Citrus Research Board (CRB) Data under the Assumption of Simple Random Sample (SRS),'' Center for Food Safety and Applied Nutrition, FDA, 2005.

19. O'Neill, K. R., ''Statistical Derivation of Nutrition Label for Raw Red Grapefruit and Naval and Valencia Oranges from 2001–2002 United States Department of Agriculture (USDA) and 1998 Citrus Research Board (CRB) Data under the Assumption of Simple Random Sample (SRS),'' Center for Food Safety and Applied Nutrition, FDA, 2005.

20. O'Neill, K. R., ''Statistical Derivation of Nutrition Labeling from USDA Data for Appendix D to Part 101: Nutrition Facts for Cooked Seafood,'' Center for Food Safety and Applied Nutrition, FDA, 2005.

21. U.S. Census Bureau, 2002 Economic Census, American FactFinder, Geographic Area Series: Summary Statistics. Available on the Internet at *http://factfinder.census.gov/home/saff/main.html?_lang=en*.

List of Subjects in 21 CFR Part 101

Food labeling, Nutrition, Reporting and recordkeeping requirements.

■ Therefore, under the Federal Food, Drug, and Cosmetic Act and under authority delegated to the Commissioner of Food and Drugs, FDA proposes to amend 21 CFR part 101 as follows:

PART 101—FOOD LABELING

■ 1. The authority citation for 21 CFR part 101 continues to read as follows:

Authority: 15 U.S.C. 1453, 1454, 1455; 21 U.S.C. 321, 331, 342, 343, 348, 371; 42 U.S.C. 243, 264, 271.

■ 2. Section 101.44 is revised to read as follows:

§ 101.44 What are the 20 most frequently consumed raw fruits, vegetables, and fish in the United States?

(a) The 20 most frequently consumed raw fruits are: Apple, avocado (California), banana, cantaloupe, grapefruit, grapes, honeydew melon, kiwifruit, lemon, lime, nectarine, orange, peach, pear, pineapple, plums, strawberries, sweet cherries, tangerine, and watermelon.

(b) The 20 most frequently consumed raw vegetables are: Asparagus, bell pepper, broccoli, carrot, cauliflower, celery, cucumber, green (snap) beans, green cabbage, green onion, iceberg lettuce, leaf lettuce, mushrooms, onion, potato, radishes, summer squash, sweet corn, sweet potato, and tomato.

(c) The 20 most frequently consumed raw fish are: Blue crab, catfish, clams, cod, flounder/sole, haddock, halibut, lobster, ocean perch, orange roughy, oysters, pollock, rainbow trout, rockfish, salmon (Atlantic/coho/Chinook/sockeye, chum/pink), scallops, shrimp, swordfish, tilapia, and tuna.

■ 3. Amend § 101.45 by revising paragraph (a)(3)(iii) and adding paragraph (a)(3)(iv) to read as follows:

§ 101.45 What are the guidelines for the voluntary nutrition labeling of raw fruits, vegetables, and fish?

(a) * * *

(3) * * *

(iii) When retailers provide nutrition labeling information for more than one raw fruit or vegetable on signs or posters or in brochures, notebooks, or leaflets, the listings for saturated fat, *trans* fat, and cholesterol may be omitted from the charts or individual nutrition labels if a footnote states that most fruits and vegetables provide negligible amounts of these nutrients, but that avocados contain 0.5 gram (g) of saturated fat per ounce (e.g., ''Most fruits and vegetables provide negligible amounts of saturated fat, *trans* fat, and cholesterol; avocados provide 0.5 g of saturated fat per ounce''). The footnote also may contain information about the polyunsaturated and monounsaturated fat content of avocados.

(iv) When retailers provide nutrition labeling information for more than one raw fish on signs or posters or in brochures, notebooks, or leaflets, the listings for *trans* fat, dietary fiber, and sugars may be omitted from the charts or individual nutrition labels if the following footnote is used, ''Fish provide negligible amounts of *trans* fat, dietary fiber, and sugars.''

* * * * *

■ 4. Appendices C and D to part 101 are revised to read as follows:

BILLING CODE 4160–01–S

Appendix C to Part 101.--Nutrition Facts for Raw Fruits and Vegetables

Nutrition facts[1] for raw fruits and vegetables edible portion	Calories	Calories from fat	Total Fat		Saturated Fat		Trans Fat	Cholesterol		Sodium		Potassium		Total Carbohydrate		Dietary Fiber		Sugars	Protein	Vitamin A	Vitamin C	Calcium	Iron
			(g)	(%)	(g)	(%)	(g)	(mg)	(%)	(mg)	(%)	(mg)	(%)	(mg)	(%)	(g)	(%)	(g)	(g)	(%)	(%)	(%)	(%)
Apple, 1 large (242 g/8 oz)	130	0	0	0	0	0	0	0	0	0	0	260	7	34	11	5	20	25	1	2	8	2	2
Avocado, California, 1/5 medium (30 g/1.1 oz)	50	35	4.5	7	0.5	3	0	0	0	0	0	140	4	3	1	1	4	0	1	0	4	0	2
Banana, 1 medium (126 g/4.5 oz)	110	0	0	0	0	0	0	0	0	0	0	450	13	30	10	3	12	19	1	2	15	0	2
Cantaloupe, 1/4 medium (134 g/4.8 oz)	50	0	0	0	0	0	0	0	0	20	1	240	7	12	4	1	4	11	1	120	80	2	2
Grapefruit, 1/2 medium (154 g/5.5 oz)	60	0	0	0	0	0	0	0	0	0	0	160	5	15	5	2	8	11	1	35	100	4	0
Grapes, 3/4 cup (126 g/4.5 oz)	90	0	0	0	0	0	0	0	0	15	1	240	7	23	8	1	4	20	0	0	2	2	0
Honeydew Melon, 1/10 medium melon (134 g/4.8 oz)	50	0	0	0	0	0	0	0	0	30	1	210	6	12	4	1	4	11	1	2	45	2	2
Kiwifruit, 2 medium (148 g/5.3 oz)	90	10	1	2	0	0	0	0	0	0	0	450	13	20	7	4	16	13	1	2	240	4	2
Lemon, 1 medium (58 g/2.1 oz)	15	0	0	0	0	0	0	0	0	0	0	75	2	5	2	2	8	2	0	0	40	2	0
Lime, 1 medium (67 g/2.4 oz)	20	0	0	0	0	0	0	0	0	0	0	75	2	7	2	2	8	0	0	0	35	0	0
Nectarine, 1 medium (140 g/5.0 oz)	60	5	0.5	1	0	0	0	0	0	0	0	250	7	15	5	2	8	11	1	8	15	0	2
Orange, 1 medium (154 g/5.5 oz)	80	0	0	0	0	0	0	0	0	0	0	250	7	19	6	3	12	14	1	2	130	6	0
Peach, 1 medium (147 g/5.3 oz)	60	0	0.5	1	0	0	0	0	0	0	0	230	7	15	5	2	8	13	1	6	15	0	2
Pear, 1 medium (166 g/5.9 oz)	100	0	0	0	0	0	0	0	0	0	0	190	5	26	9	6	24	16	1	0	10	2	0
Pineapple, 2 slices, 3" diameter, 3/4" thick (112 g/4 oz)	50	0	0	0	0	0	0	0	0	10	0	120	3	13	4	1	4	10	1	2	50	2	2
Plums, 2 medium (151 g/5.4 oz)	70	0	0	0	0	0	0	0	0	0	0	230	7	19	6	2	8	16	1	8	10	0	2
Strawberries, 8 medium (147g/5.3 oz)	50	0	0	0	0	0	0	0	0	0	0	170	5	11	4	2	8	8	1	0	160	2	2
Sweet cherries, 21 cherries; 1 cup (140 g/5.0 oz)	100	0	0	0	0	0	0	0	0	0	0	350	10	26	9	1	4	16	1	2	15	2	2
Tangerine, 1 medium (109 g/3.9 oz)	50	0	0	0	0	0	0	0	0	0	0	160	5	13	4	2	8	9	1	6	45	4	0
Watermelon, 1/18 medium melon; 2 cups diced pieces (280 g/10.0 oz)	80	0	0	0	0	0	0	0	0	0	0	270	8	21	7	1	4	20	1	30	25	2	4

Appendix C to Part 101.--Nutrition Facts for Raw Fruits and Vegetables-continued

Nutrition facts[1] for raw fruits and vegetables edible portion	Calories	Calories from fat	Total Fat		Saturated Fat		Trans Fat	Cholesterol		Sodium		Potassium		Total Carbohydrate		Dietary Fiber		Sugars	Protein	Vitamin A	Vitamin C	Calcium	Iron
			(g)	(%)	(g)	(%)	(g)	(mg)	(%)	(mg)	(%)	(mg)	(%)	(mg)	(%)	(g)	(%)	(g)	(g)	(%)	(%)	(%)	(%)
Asparagus, 5 spears (93 g/3.3 oz)	20	0	0	0	0	0	0	0	0	0	0	230	7	4	1	2	8	2	2	10	15	2	2
Bell pepper, 1 medium (148 g/5.3 oz)	25	0	0	0	0	0	0	0	0	40	2	220	6	6	2	2	8	4	1	4	190	2	4
Broccoli, 1 medium stalk (148 g/5.3 oz)	45	0	0.5	1	0	0	0	0	0	80	3	460	13	8	3	3	12	2	4	6	220	6	6
Carrot, 1 carrot, 7" long, 1 1/4" diameter (78 g/2.8 oz)	30	0	0	0	0	0	0	0	0	60	3	250	7	7	2	2	8	5	1	110	10	2	2
Cauliflower, 1/6 medium head (99 g/3.5 oz)	25	0	0	0	0	0	0	0	0	30	1	270	8	5	2	2	8	2	2	0	100	2	2
Celery, 2 medium stalks (110 g/3.9 oz)	15	0	0	0	0	0	0	0	0	115	5	260	7	4	1	2	8	2	0	10	15	4	2
Cucumber, 1/3 medium (99 g/3.5 oz)	10	0	0	0	0	0	0	0	0	0	0	140	4	2	1	1	4	1	1	4	10	2	2
Green (snap) beans, 3/4 cup cut (83 g/3.0 oz)	20	0	0	0	0	0	0	0	0	0	0	200	6	5	2	3	12	2	1	4	10	4	2
Green cabbage, 1/12 medium head (84 g/3.0 oz)	25	0	0	0	0	0	0	0	0	20	1	190	5	5	2	2	8	3	1	0	70	4	2
Green onion, 1/4 cup chopped (25 g/0.9 oz)	10	0	0	0	0	0	0	0	0	10	0	70	2	2	1	1	4	1	0	2	8	2	2
Iceberg lettuce, 1/6 medium head (89 g/3.2 oz)	10	0	0	0	0	0	0	0	0	10	0	125	4	2	1	1	4	2	1	6	6	2	2
Leaf lettuce, 1 1/2 cups shredded (85 g/3.0 oz)	15	0	0	0	0	0	0	0	0	35	1	170	5	2	1	1	4	1	1	130	6	2	4
Mushrooms, 5 medium (84 g/3.0 oz)	20	0	0	0	0	0	0	0	0	15	0	300	9	3	1	1	4	0	3	0	2	0	2
Onion, 1 medium (148 g/5.3 oz)	45	0	0	0	0	0	0	0	0	5	0	190	5	11	4	3	12	9	1	0	20	4	4
Potato, 1 medium (148 g/5.3 oz)	110	0	0	0	0	0	0	0	0	0	0	620	18	26	9	2	8	1	3	0	45	2	6
Radishes, 7 radishes (85 g/3.0 oz)	10	0	0	0	0	0	0	0	0	55	2	190	5	3	1	1	4	2	0	0	30	2	2
Summer squash, 1/2 medium (98 g/3.5 oz)	20	0	0	0	0	0	0	0	0	0	0	260	7	4	1	2	8	2	1	6	30	2	2
Sweet corn, kernels from 1 medium ear (90 g/3.2 oz)	90	20	2.5	4	0	0	0	0	0	0	0	250	7	18	6	2	8	5	4	2	10	0	2
Sweet Potato, 1 medium, 5" long, 2"diameter (130 g/4.6 oz)	100	0	0	0	0	0	0	0	0	70	3	440	13	23	8	4	16	7	2	120	30	4	4
Tomato, 1 medium (148 g/5.3 oz)	25	0	0	0	0	0	0	0	0	20	1	340	10	5	2	1	4	3	1	20	40	2	4

[1] Raw, edible weight portion. Percent (%) Daily Values are based on a 2,000 calorie diet.

Appendix D to Part 101.-Nutrition Facts for Cooked Fish

Nutrition facts[1] fish (84 g/3 oz)	Calories	Calories from fat	Total Fat		Saturated Fat		Trans Fat	Cholesterol		Sodium		Potassium		Total Carbohydrate		Dietary Fiber		Sugars	Protein	Vitamin A	Vitamin C	Calcium	Iron
			(g)	(%)	(g)	(%)	(g)	(mg)	(%)	(mg)	(%)	(mg)	(%)	(mg)	(%)	(g)	(%)	(g)	(g)	(%)	(%)	(%)	(%)
Blue crab	100	10	1	2	0	0	0	95	32	330	14	300	9	0	0	0	0	0	20	0	4	10	4
Catfish	130	60	6	9	2	10	0	50	17	40	2	230	7	0	0	0	0	0	17	0	0	0	0
Clams, about 12 small	110	15	1.5	2	0	0	0	80	27	95	4	470	13	6	2	0	0	0	17	10	0	8	30
Cod	90	5	1	2	0	0	0	50	17	65	3	460	13	0	0	0	0	0	20	0	2	2	2
Flounder/sole	100	15	1.5	2	0	0	0	55	18	100	4	390	11	0	0	0	0	0	19	0	0	2	0
Haddock	100	10	1	2	0	0	0	70	23	85	4	340	10	0	0	0	0	0	21	2	0	2	6
Halibut	120	15	2	3	0	0	0	40	13	60	3	500	14	0	0	0	0	0	23	4	0	2	6
Lobster	80	0	0.5	1	0	0	0	60	20	320	13	300	9	1	0	0	0	0	17	2	0	6	2
Ocean perch	110	20	2	3	0.5	3	0	45	15	95	4	290	8	0	0	0	0	0	21	0	2	10	4
Orange roughy	80	5	1	2	0	0	0	20	7	70	3	340	10	0	0	0	0	0	16	2	0	4	2
Oysters, about 12 medium	100	35	4	6	1	5	0	80	27	300	13	220	6	6	2	0	0	0	10	0	6	6	45
Pollock	90	10	1	2	0	0	0	80	27	110	5	370	11	0	0	0	0	0	20	2	0	0	2
Rainbow trout	140	50	6	9	2	10	0	55	18	35	1	370	11	0	0	0	0	0	20	4	4	8	2
Rockfish	110	15	2	3	0	0	0	40	13	70	3	440	13	0	0	0	0	0	21	4	0	2	2
Salmon, Atlantic/Coho/Sockeye/Chinook	200	90	10	15	2	10	0	70	23	55	2	430	12	0	0	0	0	0	24	4	4	2	2
Salmon, Chum/Pink	130	40	4	6	1	5	0	70	23	65	3	420	12	0	0	0	0	0	22	2	0	2	4
Scallops, about 6 large or 14 small	140	10	1	2	0	0	0	65	22	310	13	430	12	5	2	0	0	0	27	2	0	4	14
Shrimp	100	10	1.5	2	0	0	0	170	57	240	10	220	6	0	0	0	0	0	21	4	4	6	10
Swordfish	120	50	6	9	1.5	8	0	40	13	100	4	310	9	0	0	0	0	0	16	2	2	0	6
Tilapia	110	20	2.5	4	1	5	0	75	25	30	1	360	10	0	0	0	0	0	22	0	2	0	2
Tuna	130	15	1.5	2	0	0	0	50	17	40	2	480	14	0	0	0	0	0	26	2	2	2	4

[1] Cooked, edible weight portion. Percent (%) Daily Values are based on a 2,000 calorie diet.

Dated: July 18, 2006.

Jeffrey Shuren,

Assistant Commissioner for Policy.

[FR Doc. 06–6436 Filed 7–24–06; 8:45 am]

BILLING CODE 4160–01–C

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

21 CFR Parts 812 and 814

[Docket No. 2006N–0284]

Medical Device Regulations; Addresses; Technical Amendment

AGENCY: Food and Drug Administration, HHS.

ACTION: Final rule; technical amendment.

SUMMARY: The Food and Drug Administration (FDA) is amending certain device regulations to include address information for the Center for Biologics Evaluation and Research and the Center for Drug Evaluation and Research. These regulations pertain to the submission of certain documents to FDA. Currently, only address information for the Center for Devices and Radiological Health is listed in these regulations. This action is being taken to ensure the accuracy of FDA's regulations.

DATES: This rule is effective July 25, 2006.

FOR FURTHER INFORMATION CONTACT: Stephen M. Ripley, Center for Biologics Evaluation and Research (HFM–17), Food and Drug Administration, 1401 Rockville Pike, suite 200N, Rockville, MD 20852–1448, 301–827–6210.

SUPPLEMENTARY INFORMATION: FDA is amending its regulations in 21 CFR parts 812 and 814 to include address information for the Center for Biologics Evaluation and Research and the Center for Drug Evaluation and Research. These regulations pertain to the investigational device exemptions (IDEs) and premarket approval (PMA) of medical devices. Currently, only the address information for the Center for Devices and Radiological Health is listed in these regulations for the various submissions associated with IDE applications and PMA applications. IDEs and PMAs, and their associated submissions, must be sent to the address of the appropriate Center that has regulatory responsibility for the medical device. Therefore, FDA is updating its regulations to include this address information.

Publication of this document constitutes final action under the Administrative Procedure Act (5 U.S.C. 553). FDA has determined that notice and public comment are unnecessary because this amendment to the regulations provides only a technical change to update addresses in the Code of Federal Regulations, and is nonsubstantive.

List of Subjects

21 CFR Part 812

Health records, Medical devices, Medical research, Reporting and recordkeeping requirements.

21 CFR Part 814

Administrative practice and procedure, Confidential business information, Medical devices, Medical research, and Reporting and recordkeeping requirements.

■ Therefore, under the Federal Food, Drug, and Cosmetic Act, and Public Health Service Act, and under authority delegated to the Commissioner of Food and Drugs, 21 CFR parts 812 and 814 are amended as follows:

PART 812—INVESTIGATIONAL DEVICE EXEMPTIONS

■ 1. The authority citation for 21 CFR part 812 continues to read as follows:

Authority: 21 U.S.C. 331, 351, 352, 353, 355, 360, 360c–360f, 360h–360j, 371, 372, 374, 379e, 381, 382, 383; 42 U.S.C. 216, 241, 262, 263b–263n.

■ 2. Section 812.19 is revised to read as follows:

§ 812.19 Address for IDE correspondence.

(a) If you are sending an application, supplemental application, report, request for waiver, request for import or export approval, or other correspondence relating to matters covered by this part, you must send the submission to the appropriate address as follows:

(1) For devices regulated by the Center for Devices and Radiological Health, send it to the Document Mail Center (HFZ–401), Center for Devices and Radiological Health, Food and Drug Administration, 9200 Corporate Blvd., Rockville, MD 20850.

(2) For devices regulated by the Center for Biologics Evaluation and Research, send it to the Document Control Center (HFM–99), Center for Biologics Evaluation and Research, Food and Drug Administration, 1401 Rockville Pike, suite 200N, Rockville, MD 20852–1448.

(3) For devices regulated by the Center for Drug Evaluation and Research, send it to Central Document Control Room, Center for Drug Evaluation and Research, Food and Drug Administration, 5901–B Ammendale Rd., Beltsville, MD 20705–1266.

(b) You must state on the outside wrapper of each submission what the submission is, for example, an ''IDE application,'' a ''supplemental IDE application,'' or a ''correspondence concerning an IDE (or an IDE application).''

PART 814—PREMARKET APPROVAL OF MEDICAL DEVICES

■ 3. The authority citation for 21 CFR part 814 continues to read as follows:

Authority: 21 U.S.C. 351, 352, 353, 360, 360c–360j, 371, 372, 373, 374, 375, 379, 379e, 381.

■ 4. Section 814.20 is amended by revising paragraph (h) to read as follows:

§ 814.20 Application.

* * * * *

(h) If you are sending a PMA, PMA amendment, PMA supplement, or correspondence with respect to a PMA, you must send the submission to the appropriate address as follows:

(1) For devices regulated by the Center for Devices and Radiological Health, send it to: Document Mail Center (HFZ–401), Center for Devices and Radiological Health, Food and Drug Administration, 9200 Corporate Blvd., Rockville, MD 20850.

(2) For devices regulated by the Center for Biologics Evaluation and Research, send it to: Document Control Center (HFM–99), Center for Biologics Evaluation and Research, Food and Drug Administration, 1401 Rockville Pike, suite 200N, Rockville, MD 20852–1448.

(3) For devices regulated by the Center for Drug Evaluation and Research, send it to: Central Document Control Room, Center for Drug Evaluation and Research, Food and Drug Administration, 5901–B Ammendale Rd., Beltsville, MD 20705–1266.

Dated: July 17, 2006.

Jeffrey Shuren,

Assistant Commissioner for Policy.

[FR Doc. E6–11777 Filed 7–24–06; 8:45 am]

BILLING CODE 4160–01–S

DEPARTMENT OF THE TREASURY

Internal Revenue Service

26 CFR Part 31

[TD 9276]

RIN 1545–BD96

Flat Rate Supplemental Wage Withholding

AGENCY: Internal Revenue Service (IRS), Treasury.

ACTION: Final regulations.

SUMMARY: This document contains final regulations amending the regulations that provide for determining the amount of income tax withholding on supplemental wages. These regulations apply to all employers and others making supplemental wage payments to employees. These regulations reflect changes in the law made by the American Jobs Creation Act of 2004.

DATES: *Effective Date:* January 1, 2007.

Applicability Date: These regulations are applicable to payments made on or after January 1, 2007.

FOR FURTHER INFORMATION CONTACT: A. G. Kelley, (202) 622–6040 (not a toll-free number).

SUPPLEMENTARY INFORMATION:

Background

This document contains amendments to 26 CFR part 31 under sections 3401 and 3402 of the Internal Revenue Code (Code). Section 904(b) of the American Jobs Creation Act of 2004 (Pub. L. 108–357, 118 Stat. 1418) (AJCA) provided for mandatory income tax withholding at the highest rate of income tax in effect under section 1 of the Code to the extent an employee's total supplemental wages paid by the employer exceed $1,000,000 during the calendar year. The AJCA also provided that the supplemental wages paid by other businesses under common control would be taken into account in determining whether the employer has paid $1,000,000 of supplemental wages to an employee in the calendar year. In addition, section 904(a) of the AJCA provided that the rate for purposes of optional flat rate withholding on other supplemental wages (*i.e.*, those supplemental wages not subject to mandatory flat rate withholding at the highest rate of income tax) would remain at 25 percent, but could change if income tax rates change.

Proposed regulations under sections 3401 and 3402 of the Code were published in the **Federal Register** on January 5, 2005 (70 FR 767, 2005–1 C.B. 484). Written and electronic comments responding to the notice of proposed rulemaking were received. A public hearing was held on June 9, 2005. After consideration of all the comments, the proposed regulations are adopted as amended by this Treasury decision.

Summary of Comments and Explanation of Provisions

The final regulations reflect a balancing of two concerns: (1) In accordance with section 3402(a), procedures for withholding should have the goal of approximating the income tax liability of the employee receiving the wages; and (2) procedures for income tax withholding should not place undue administrative burdens on employers.

Definitions of Regular Wages and Supplemental Wages

The final regulations have adopted the definitions of regular wages and supplemental wages provided in the proposed regulations with certain modifications discussed below. In response to comments on the proposed regulations, the final regulations also allow an employer to treat certain wage payments as regular wages or supplemental wages.

The final regulations, like the proposed regulations, provide that supplemental wages include any wages paid by an employer that are not regular wages. Regular wages are defined as amounts paid by an employer for a payroll period either at a regular hourly rate or in a predetermined fixed amount. Wages that vary from payroll period to payroll period based on factors other than the amount of time worked, such as commissions, tips, and bonuses, are supplemental wages.

The proposed regulations provided that a wage payment could qualify as a supplemental wage payment only if it was paid in addition to regular wages paid to the employee. Many commenters were concerned that the same type of compensation would be classified as regular or supplemental wages depending on whether the compensation was paid in addition to regular wages. Commenters also requested that payments of wages after the termination of employment be treated as supplemental wages if such payments would have been treated as supplemental wages prior to termination. Commenters suggested that characterizing the same type of compensation differently depending upon the circumstances upon which the payment was made unduly complicated payroll administration. Commenters also noted that the proposed regulations did not address the classification of wage payments if the employee received two or more types of payments that would normally be classified as supplemental wages, but received no regular wages.

In response to these comments, the final regulations eliminate the rule that a payment can qualify as supplemental wages only if regular wages have been paid to the employee. Under the final regulations, payments that satisfy the basic definition of supplemental wages (*i.e.*, all wage payments other than regular wage payments) will be supplemental wages regardless of whether the employee has received any regular wages in his or her working career with the employer. For example, if an employee's compensation from an employer consists of only income from the exercise of nonstatutory stock options and noncash fringe benefits, such wages will be supplemental wages for federal income tax withholding purposes. Similarly, if a retiree is receiving payments of nonqualified deferred compensation made by the employer or a rabbi trust, such payments will be supplemental wages regardless of whether the payments are made in addition to regular wage payments during either that calendar year or the employee's entire career with the employer.

Commenters requested more flexibility for employers in determining whether particular types of payments are supplemental wages, such as a facts and circumstances test, or a default determination that amounts are supplemental wages where there is uncertainty regarding the correct classification of wages as regular or supplemental wages. Although the final regulations do not adopt these specific suggestions, the final regulations nonetheless address these concerns in other ways. As described below, the final regulations provide more guidance, compared to the proposed regulations, regarding the proper classification of certain types of payments as regular or supplemental wages. Also, the final regulations provide employers with a number of options regarding the treatment of certain payments that will simplify compliance with the requirement that the employer separately track the payment of supplemental wages prior to reaching the threshold for mandatory flat rate withholding. These features of the final regulations help to minimize uncertainties about the classification of particular wage payments.

Commenters requested guidance on whether a number of specific types of payments were regular wages or supplemental wages, including shift differentials paid to employees on an

hourly basis, payments to retirees, sick pay, income from restricted stock awards, income from nonstatutory stock options exercised by former employees or retirees, amounts deferred under a retirement plan pursuant to a salary reduction agreement or a nonqualified deferred compensation plan, post-retirement or post-termination payments of wages that would have been treated as supplemental wages if paid prior to the termination of the employment relationship, and imputed income amounts for health insurance coverage for non-dependents. The final regulations have provided additional examples of supplemental wages and regular wages, including some of the items for which specific advice was requested. Other items that are not specifically included in the final regulations were considered to be either analogous to items covered or specifically covered by applicable rules.

A commenter requested that employers be permitted to treat tips, overtime pay, commissions, third-party sick pay, and taxable fringe benefits as either supplemental wages or regular wages. The commenter indicated that many employers have systems in place that treat such payments as regular wages and wanted to continue with such systems. In addition, the commenter noted that tips are considered to represent a basic part of the compensation of many employees and that a tip credit is permitted against the minimum wage for Fair Labor Standards Act (FLSA) purposes. Also, many employees receiving overtime pay earn such pay each payroll period.

In response to this comment, the final regulations permit employers to treat tips and/or overtime pay as regular wages. To provide employers with more flexibility, any such treatment is not required to be applied uniformly to all employees of the employer.

The final regulations do not allow an employer to treat commissions, third party sick pay paid by agents of the employer, or taxable fringe benefits as anything other than supplemental wages. Commissions may vary considerably from pay period to pay period, have the essential characteristics of supplemental wages, and have historically been characterized in the existing regulations as supplemental wages. A longstanding regulation treats sick pay paid by an agent of the employer as supplemental wages and the final regulations have not amended that regulation in providing a definition of supplemental wages. Also, noncash fringe benefits have been treated as supplemental wages since withholding requirements with respect to noncash fringe benefits were set forth in response to the fringe benefit laws enacted by the Deficit Reduction Act of 1984. See Announcement 85–113, (1985–31 I.R.B. 31). With respect to supplemental wage payments below the threshold for mandatory flat rate withholding, employers may use the aggregate procedure, as described below, in determining the amount of withholding to produce similar withholding amounts as if the payments were classified as regular wages.

Procedures for Withholding on Supplemental Wages

These regulations also interpret provisions of the AJCA relating to the taxation of supplemental wages.

Procedures for Withholding on Supplemental Wages of $1,000,000 or Less During a Calendar Year

The final regulations continue to provide that, if an employee has not received cumulatively more than $1,000,000 of supplemental wages during the calendar year, generally there are two procedures available to an employer in withholding on a payment of supplemental wages: (1) The aggregate procedure and (2) optional flat rate withholding. Under the aggregate procedure, employers calculate the amount of withholding due by aggregating the amount of supplemental wages with the regular wages paid for the current payroll period or for the most recent payroll period of the year of the payment, and treating the aggregate as if it were a single wage payment for the regular payroll period.

Optional flat rate withholding on supplemental wages (of $1,000,000 or less cumulatively) allows employers to disregard the amount of regular wages paid to an employee as well as the withholding allowances claimed by an employee on Form W–4, ''Employee's Withholding Allowance Certificate,'' and use a flat percentage rate specified in the regulations in calculating the amount of withholding. The final regulations, like existing regulations and revenue rulings, continue to provide that optional flat rate withholding on supplemental wages is generally available only if (1) the employer has withheld income tax from regular wages paid the employee, and (2) the supplemental wages are either (a) not paid concurrently with regular wages or (b) separately stated on the payroll records of the employer.

Commenters requested that employers be allowed to use optional flat rate withholding with respect to such payments to a former employee even if no other payments of wages were being made to the employee during that calendar year. Commenters believed that the requirement that income tax must have been withheld from the regular wages of the employee was unduly restrictive and noted that employers may have difficulty in obtaining Forms W–4 from individuals who were no longer employees.

However, eliminating the requirement that income tax must have been withheld from regular wages paid to the employee in order for optional flat rate withholding to be available to the employer would exacerbate the problem of overwithholding on wages paid to employees. Therefore, the final regulations have retained the rule that income tax must have been withheld from the regular wages of the employee in order for optional flat rate withholding to be available to employers. The final regulations clarify that the income tax withholding requirement will be satisfied if income tax has been withheld from regular wages paid during the same year as the payment of supplemental wages or during the preceding calendar year. The final regulations continue to provide that if the supplemental wage payment is paid under the conditions permitting the use of optional flat rate withholding, the decision whether to use optional flat rate withholding rather than the aggregate procedure is discretionary with the employer.

Procedures for Withholding on Supplemental Wages in Excess of $1,000,000 Paid to One Employee in One Calendar Year

The AJCA established different withholding rules for supplemental wages in excess of $1,000,000 received by an employee from an employer during a calendar year. The AJCA provided that, effective January 1, 2005, employers must withhold from supplemental wages in excess of $1,000,000 at the highest income tax rate under section 1 of the Code.

The final regulations provide that if the sum of a supplemental wage payment and all other supplemental wage payments paid by an employer to an employee during the calendar year exceeds $1,000,000, the withholding rate on the supplemental wages in excess of $1,000,000 shall be equal to the maximum rate of tax in effect under section 1 for taxable years beginning in such calendar year. The maximum rate of tax in effect for taxable years beginning in 2005 is 35 percent. Thus, the mandatory flat rate for supplemental wages in excess of $1 million in a given taxable year is 35 percent and will

remain at 35 percent until income tax rates change.[1]

Comments on Method for Withholding on Wages over $1,000,000

Many commenters expressed concern that the mandatory flat rate withholding requirements would force them to identify whether every wage payment was a regular wage or a supplemental wage and to track all supplemental wages paid to determine whether mandatory flat rate withholding applied. Under prior law, treating any wage payment as a supplemental wage was optional for employers, and many employers withheld on supplemental wages under the aggregate procedure and thus were not required to identify whether payments were regular wages or supplemental wages. Commenters were concerned about the cost and burden of implementing a system to track whether payments were regular wages or supplemental wages, especially if only a few employees would have wages subject to mandatory flat rate withholding. While the IRS and Treasury Department appreciate the potential burden created by the need to distinguish between regular and supplemental wages in order to comply with the requirements of section 904(b) of the AJCA, section 904(b) mandates flat rate withholding only for supplemental wages in excess of $1,000,000. The IRS and Treasury Department request additional comments on how any burden could be mitigated while taking into account the scope of section 904(b) and the rules provided in section 3402 of the Code which describe the circumstances under which employees provide withholding exemption certificates, and employers must follow them in implementing withholding. For example, the IRS and Treasury Department are interested in views on whether it should permit employers to withhold at the mandatory flat rate on any amount of total wages (both regular and supplemental) that exceeds $1,000,000.

Special Rules for Determining Applicability of Mandatory Flat Rate Withholding

A commenter also requested that an employer be permitted to treat any supplemental wage payment as subject to mandatory flat rate withholding whenever it is anticipated the employee's supplemental wages for the year are approaching the $1,000,000 threshold. To address these concerns, the final regulations and the revenue procedure provide employers with a number of options in determining whether supplemental wages in excess of $1,000,000 have been paid to an employee during the calendar year.

One commenter suggested that guidance was needed as to the calculation of the amount of noncash fringe benefits to be included in supplemental wages for purposes of determining whether the $1,000,000 threshold for mandatory flat rate withholding has been reached. With respect to the determination of the amount of supplemental wages for purposes of the mandatory flat rate withholding, the regulations are not intended to require different calculations of the amount of wages than would normally apply in determining the amount of wages subject to withholding. Thus, currently applicable procedures for the calculation of noncash fringe benefits of an employee (see Announcement 85–113, which provides employers with special accounting rules that they may use to determine the amount of noncash fringe benefits that are wages subject to income tax withholding) will continue to apply in determining the amount of supplemental wages for purposes of the mandatory flat rate withholding. If the noncash fringe benefit amounts are not wages subject to income tax withholding, then they are not included in regular wages or supplemental wages.

A commenter suggested that specific guidance was needed concerning whether disqualifying dispositions of shares of stock acquired pursuant to the exercise of statutory stock options are taken into account as supplemental wages for purposes of determining whether the $1,000,000 threshold has been reached. Such income is not wages subject to federal income tax withholding. The final regulations specifically provide that income from disqualifying dispositions of shares of stock acquired pursuant to the exercise of statutory stock options is not included in supplemental wages.

A commenter also requested that, for purposes of determining whether an employee has received $1,000,000 of supplemental wages, an employer should be allowed to treat amounts included in Box 1 of Form W–2, ''Wage and Tax Statement'' as ''wages, tips, other compensation'' as supplemental wages. Items reportable in Box 1 of Form W–2 include items that are not subject to income tax withholding. Nevertheless, in the interest of making the rules administrable for employers, the regulations provide that employers can treat such amounts as supplemental wages.

A commenter requested that, in determining whether the employee has received $1,000,000 of supplemental wages, employers should be allowed to take into account the gross amount of a supplemental wage payment including any pretax deductions that are attributable to such supplemental wages. However, pretax deductions, including salary reduction deferrals, are not includible in gross income for the taxable year and are not wages subject to income tax withholding. Therefore, the IRS and Treasury Department have not adopted this proposal.

Mandatory flat rate withholding applies only to the excess of supplemental wages over $1,000,000 received by an employee from an employer, taking into consideration all payments of supplemental wages made by an employer to an employee. Therefore, the new mandatory flat rate withholding on supplemental wages in excess of $1,000,000 can apply to all of a payment or only a portion of the payment.

The proposed regulations provided that if a particular supplemental wage payment results in an employee exceeding the $1,000,000 supplemental wage threshold, mandatory flat rate withholding will apply to the extent that the payment, together with other supplemental wage payments previously made to the employee during the year, is in excess of $1,000,000. Because this provision could result in an employer having to treat two portions of a single supplemental wage payment under different withholding regimes, commenters requested that employers be permitted to elect to treat the entire amount of the payment that results in supplemental wage payments to the employee exceeding $1,000,000 as subject to mandatory flat rate withholding. Commenters also requested that to avoid having the mandatory flat rate withholding apply only to the portion of a supplemental wage payment that exceeds $1,000,000, employers be allowed to apply the mandatory rate only to payments after the payment which causes the employee to have received $1,000,000 or more of supplemental wages.

The IRS and Treasury Department concluded this latter approach could not be reconciled with the statute. Section 904(b) of the AJCA provides that ''if the supplemental wage payment, when added to all such payments previously made by the employer to the employee during the calendar year, exceeds $1,000,000, the rate used with respect to such excess shall be equal to

[1] Under the sunset provision in section 901 of the Economic Growth and Tax Relief Reconciliation Act of 2001, the mandatory flat rate will change to 39.6 percent for taxable years beginning after December 31, 2010.

the maximum rate of tax * * *.'' Accordingly, the final regulations continue with the rule that, if a supplemental wage payment results in the total supplemental wage payments to the employee from the employer during the calendar year exceeding $1,000,000, the amount of that payment in excess of $1,000,000 (when added to the supplemental wage payments previously made in the calendar year) is subject to mandatory flat rate withholding. The final regulations, however, permit employers to treat the entire amount of the payment that results in the employee receiving total supplemental wages of more than $1,000,000 as subject to mandatory flat rate withholding. This treatment can apply on an employee-by-employee basis.

A commenter requested that guidance be provided as to the calculation of supplemental wages for purposes of determining the applicability of mandatory flat rate withholding in a situation where salary reduction deferral amounts are deferred from either gross regular wage payments or gross supplemental wage payments to the employee. The commenters requested flexibility in allocating such deferrals. However, in order to apply mandatory flat rate withholding on a consistent basis, payments of wages must be correctly identified as either regular wages or supplemental wages. Therefore, the final regulations provide that, in determining the amount of supplemental wages paid, salary deferral amounts are allocated to the gross regular wage payments or to the gross supplemental wage payments from which they are actually deducted. For example, if an employee had a valid salary reduction agreement deferring 10 percent of all salary and bonuses, and the employee had received wage payments based on $1,500,000 of gross salary and $1,000,000 of gross bonuses prior to reduction for the deferrals (and no other wages), the employer would allocate $150,000 to the gross regular wage payment and $100,000 to the gross supplemental wage payment. Thus, for purposes of the mandatory flat rate withholding, the example employee has received $900,000 of supplemental wages.

Taking Into Account Payments by Agents of Employers in Determining Applicability of Mandatory Flat Rate Withholding

In determining whether the supplemental wages paid by an employer to an employee in a given taxable year exceed $1,000,000, the proposed regulations provided that an employer (the first employer) must consider wage payments made to the employee by any other person treated as a single employer with the first employer under section 52(a) or 52(b). Furthermore, if an employer enlists a third party to make a payment to an employee on the employer's behalf, the payment will be considered as made by the employer even though it may have been delivered to the employee by the third party.

Commenters expressed the view that employers should not be required to count supplemental wage payments made by third party agents in determining whether the $1,000,000 supplemental wage threshold has been met. Although the AJCA did not specifically address whether supplemental wage payments made by employers through agents must be considered in determining the applicability of mandatory flat rate withholding, requiring that such wages be taken into account is consistent with the purpose of the legislation to impose income tax withholding on a basis that is more consistent with income tax liability. Failure to consider payments made by agents of an employer would create an inconsistency in the application of mandatory flat rate withholding based on the type of payment systems that employers choose to put in place. Thus, the final regulations retain the rule of the proposed regulations requiring that payments made by agents of the employers must be considered in determining the applicability of mandatory flat rate withholding (with the exception of certain payments discussed below).

A commenter requested that common law employers be allowed to disregard payments made by agents if the payments would be unlikely to trigger the mandatory flat rate withholding. The commenter noted the administrative burden imposed if a third party agent were required to coordinate every payment with the employer to determine whether the employee has received $1,000,000 of supplemental wages. The commenter requested that agents be allowed to presume that mandatory flat rate withholding does not apply until year-to-date payments that they themselves make to a particular worker exceed $100,000. Also, the commenter requested that employers be allowed to presume that the mandatory flat rate withholding does not apply until year-to-date payments that the employer makes to a particular worker, without regard to payments made by a third party payer, exceed $500,000.

In order to provide relief with respect to payments made by agents, the final regulations provide a de minimis rule exception. An agent making total wage payments, including regular and supplemental wages, of less than $100,000 to an individual in any calendar year may disregard other supplemental wages from the common law employer or any other agent of the employer that would subject the employee to mandatory flat rate withholding. Similarly, an employer may disregard supplemental wage payments made by an agent to an employee in determining whether the employee has reached the $1,000,000 threshold if the agent has made total wage payments of less than $100,000 to the employee during the calendar year. If an agent does reach the $100,000 threshold of wages paid to a single employee in a calendar year, then the employer, in determining the applicability of mandatory flat rate withholding, must take into account all supplemental wages paid by the agent in determining whether mandatory flat rate withholding applies to a wage payment made after the agent reaches the $100,000 threshold. Similarly, with the payment that reaches the $100,000 threshold, the agent who has made $100,000 of wage payments to an employee during a calendar year, is required to take into account all wages paid by the employer and any other agent of the employer who has reached the $100,000 threshold in determining the applicability of mandatory flat rate withholding. This de minimis rule is subject to an anti-abuse rule, in that it does not apply to the employer in situations where the employer has created an arrangement or arrangements with five or more agents if a principal effect of the arrangement or arrangements is to reduce applicable mandatory flat rate withholding with respect to an employee. Application of the de minimis rule is optional. An employer may take into account all supplemental wages paid by agents, regardless of how small the payments are from any particular agent, in determining whether the employee has received $1,000,000 of supplemental wages during the calendar year. Similarly, an agent is not required to apply the de minimis rule.

Rates Applicable for Purposes of Optional Flat Rate Withholding

The final regulations change the optional flat rate withholding on supplemental wages to provide that the 20 percent rate applies only to supplemental wages paid prior to January 1, 1994. The rate of 28 percent

applies to supplemental wages paid after December 31, 1993, and on or before August 6, 2001. The Revenue Reconciliation Act of 1993, as amended by the Economic Growth and Tax Relief Reconciliation Act of 2001, provides that the supplemental withholding rate shall not be less than the third lowest rate of tax applicable under section 1(c) of the Code for wages paid after August 6, 2001, and before January 1, 2005. Consistent with this amendment, the regulations provide that the rate of 27.5 percent applies to supplemental wages paid after August 6, 2001, and on or before December 31, 2001, the rate of 27 percent applies to wages paid after December 31, 2001, and on or before May 27, 2003, and the rate of 25 percent applies to wages paid after May 27, 2003, and on or before December 31, 2004.

One commenter suggested that optional flat rate withholding for wages paid after December 31, 2002, and on or before May 27, 2003, should be 25 percent. The law in effect at the time as enacted by the Economic Growth and Tax Relief Reconciliation Act of 2001 provided that the supplemental withholding rate ''shall not be less than the third lowest rate of tax applicable under section 1(c) of the Internal Revenue Code of 1986.'' The commenter stated that the optional flat rate withholding should be 25 percent because the Jobs and Growth Tax Relief Reconciliation Act of 2003 provided that the third lowest rate of tax under section 1(c) of the Code after December 31, 2002, would be 25 percent. However, this provision changing the third lowest rate of income tax rate to 25 percent was not enacted into law until May 28, 2003. Thus, at the time of payments of supplemental wages made after December 31, 2002, and prior to May 28, 2003, the third lowest rate of tax under section 1(c) was 27 percent. As noted in the preamble to the proposed regulations, the IRS and Treasury Department believe that the 27 percent rate for this period is consistent with the general principle that the employment taxation of wage payments is determined based on the rates in effect at the date the wages are paid. *United States* v. *Cleveland Indians Baseball Co.,* 532 U.S. 200 (2001). Therefore, the final regulations continue to provide that the optional flat rate withholding for wages paid after December 31, 2002, and prior to May 28, 2003, was 27 percent.

For 2006, the optional flat rate withholding for supplemental wages of $1,000,000 or less in a given taxable year is 25 percent. The optional flat rate withholding will remain at 25 percent until income tax rates change.[2]

Application of Mandatory Flat Rate Withholding Regardless of Employee's Personal Income Tax Liability

Commenters requested that the final regulations provide an exception from mandatory flat rate withholding when the employee receiving the supplemental wage amount will be eligible to take an offsetting income tax credit or an offsetting income tax deduction, but no exception from the definition of wages for income tax withholding purposes applies. Commenters noted that some foreign countries impose foreign income tax but not foreign income tax withholding on supplemental wage payments made to United States employees who are based in and working in those foreign countries. If an employer is not required by foreign law to withhold foreign income tax from a supplemental wage payment, the exception from wages provided by section 3401(a)(8)(A)(ii) of the Code does not apply. However, the payment may be subject to foreign income tax and the employee may be eligible for a foreign income tax credit that could offset any liability for United States income tax. The commenters requested that the regulations provide an exception for United States residents or citizens who are working overseas and receive supplemental wage payments that are subject to foreign income tax, but not foreign income tax withholding.

Another commenter noted that an employee may be required by the terms of a divorce decree to pay the entire amount of a bonus to a former spouse and may be eligible to take an alimony deduction with respect to the transfer to the former spouse. This commenter suggested that the IRS and Treasury Department create an administrative exception from mandatory flat rate withholding that would apply if the employee submits a Form W–4 establishing that the employee will be entitled to an offsetting income tax deduction with respect to the supplemental wage payment.

In enacting the requirement for mandatory flat rate withholding, Congress made clear its intent to override the withholding that would apply pursuant to the employee's elections on the Form W–4 with withholding at a specific statutorily prescribed rate. To provide exceptions for tax credits or deductions that an employee would expect to receive would require the employer to give the employee's Form W–4 or some other document from the employee precedence over the statutory mandate. Moreover, although the commenters are suggesting limiting the exceptions to circumstances in which specific credible claims for credits or deductions can be made, implementation of such proposals would require the employer to vet claims made by individual employees about their tax circumstances. The IRS and Treasury Department decline to adopt the suggestions made by the commenters because they are contrary to statutory intent and would require the employer to assume a role in assessing employees' tax circumstances that employers cannot and should not be asked to perform.

Effective Date of Regulations

Many commenters stated that making the changes to their payroll systems necessary to comply with mandatory flat rate withholding would take time and require testing. Of particular concern was the coordination of payments by agents. In response to these comments, the final regulations will be effective with respect to wages paid on or after January 1, 2007. This will give employers time to implement any programming and coordination required by the final regulations.

A commenter also asked for permanent relief from mandatory flat rate withholding and related reporting and withholding penalties and interest if the employer (or third party payer) makes reasonable, good faith efforts to comply with the new requirements. Because Congress established this withholding as mandatory, it would be inconsistent with the statute to provide permanent relief from liability for the mandatory flat rate withholding.

Special Analyses

It has been determined that these final regulations are not a significant regulatory action as defined in Executive Order 12866. Therefore, a regulatory assessment is not required. It has also been determined that section 553(b) of the Administrative Procedure Act (5 U.S.C. chapter 5) does not apply to these regulations, and because the regulation does not impose a collection of information on small entities, the Regulatory Flexibility Act (5 U.S.C. chapter 6) does not apply, and therefore,

[2] Under current law, section 1(i)(2) will not be applicable to taxable years beginning after December 31, 2010, pursuant to the sunset provisions contained in section 901 of the Economic Growth and Tax Relief Reconciliation Act of 2001 (Pub. L. 107–16; 115 Stat. 150). See also section 107 of Public Law 108–27 (117 Stat. 755). Absent legislative action, the optional flat rate will change to 28 percent in 2011.

a Regulatory Flexibility Analysis is not required. Pursuant to section 7805(f) of the Code, the proposed regulations preceding these regulations were submitted to the Chief Counsel for Advocacy of the Small Business Administration for comment on the impact on small business.

Drafting Information

The principal author of these regulations is A. G. Kelley, Office of Division Counsel/Associate Chief Counsel (Tax Exempt and Government Entities). However, other personnel from the IRS and Treasury Department participated in their development.

List of Subjects in 26 CFR Part 31

Employment taxes, Income taxes, Penalties, Pensions, Railroad retirement, Reporting and recordkeeping requirements, Social security, Unemployment compensation.

Adoption of Amendments to the Regulations

■ Accordingly, 26 CFR part 31 is amended as follows:

PART 31—EMPLOYMENT TAXES AND COLLECTION OF INCOME TAX AT SOURCE

■ **Paragraph 1.** The authority citation to part 31 is amended by adding an entry in numerical order to read as follows:

Authority: 26 U.S.C. 7805 * * *

Section 31.3402(n)–1 also issued under 26 U.S.C. 6001, 6011 and 6364. * * *

■ **Par. 2.** Section 31.3401(a)–1 is amended by revising paragraph (b)(8)(i)(*b*)(*2*) to read as follows:

§ 31.3401(a)–1 Wages.

* * * * *

(b) * * *

(8) * * *

(i) * * *

(*b*) * * *

(*2*) Payments made by agents subject to this paragraph are supplemental wages as defined in § 31.3402(g)–1, and are therefore subject to the rules regarding withholding tax on supplemental wages provided in § 31.3402(g)–1. For purposes of those rules, unless the agent is also an agent for purposes of withholding tax from the employee's regular wages, the agent may deem tax to have been withheld from regular wages paid to the employee during the calendar year.

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■ **Par. 3.** Section 31.3401(a)–4 is amended by revising paragraph (c) to read as follows:

§ 31.3401(a)–4 Reimbursements and other expense allowance amounts.

* * * * *

(c) *Withholding rate.* Payments made under reimbursement or other expense allowance arrangements that are subject to income tax withholding are supplemental wages as defined in § 31.3402(g)–1. Accordingly, withholding on such supplemental wages is calculated under the rules provided with respect to supplemental wages in § 31.3402(g)–1.

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■ **Par. 4.** Section 31.3402(g)–1 is amended by:

■ 1. Revising paragraph (a).

■ 2. Adding a sentence at the beginning of paragraph (b)(1).

■ 3. Revising paragraph (b)(2).

The revisions and addition read as follows:

§ 31.3402(g)–1 Supplemental wage payments.

(a) *In general and withholding on supplemental wages in excess of $1,000,000*—(1) *Determination of supplemental wages and regular wages*—(i) *Supplemental wages.* An employee's remuneration may consist of regular wages and supplemental wages. Supplemental wages are all wages paid by an employer that are not regular wages. Supplemental wages include wage payments made without regard to an employee's payroll period, but also may include payments made for a payroll period. Examples of wage payments that are included in supplemental wages include reported tips (except as provided in paragraph (a)(1)(v) of this section), overtime pay (except as provided in paragraph (a)(1)(iv) of this section), bonuses, back pay, commissions, wages paid under reimbursement or other expense allowance arrangements, nonqualified deferred compensation includible in wages, wages paid as noncash fringe benefits, sick pay paid by a third party as an agent of the employer, amounts that are includible in gross income under section 409A, income recognized on the exercise of a nonstatutory stock option, wages from imputed income for health coverage for a non-dependent, and wage income recognized on the lapse of a restriction on restricted property transferred from an employer to an employee. Amounts that are described as supplemental wages in this definition are supplemental wages regardless of whether the employer has paid the employee any regular wages during either the calendar year of the payment or any prior calendar year. Thus, for example, if the only wages that an employer has ever paid an employee are payments of noncash fringe benefits and income recognized on the exercise of a nonstatutory stock option, such payments are classified as supplemental wages.

(ii) *Regular wages.* As distinguished from supplemental wages, regular wages are amounts that are paid at a regular hourly, daily, or similar periodic rate (and not an overtime rate) for the current payroll period or at a predetermined fixed determinable amount for the current payroll period. Thus, among other things, wages that vary from payroll period to payroll period (such as commissions, reported tips, bonuses, or overtime pay) are not regular wages, except that an employer may treat tips as regular wages under paragraph (a)(1)(v) of this section and an employer may treat overtime pay as regular wages under paragraph (a)(1)(iv) of this section.

(iii) *Amounts that are not wages subject to income tax withholding.* If an amount of remuneration is not wages subject to income tax withholding, it is neither regular wages nor supplemental wages. Thus, for example, income from the disqualifying dispositions of shares of stock acquired pursuant to the exercise of statutory stock options, as described in section 421(b), is not included in regular wages or supplemental wages.

(iv) *Optional treatment of overtime pay as regular wages.* Employers may treat overtime pay as regular wages rather than supplemental wages. For this purpose, *overtime pay* is defined as any pay required to be paid pursuant to federal (Fair Labor Standards Act), state, or local governmental laws at a rate higher than the normal wage rate of the employee because the employee has worked hours in excess of the number of hours deemed to constitute a normal work week or work day.

(v) *Optional treatment of tips as regular wages.* Employers may treat tips as regular wages rather than supplemental wages. For this purpose, tips are defined as including all tips which are reported to the employer pursuant to section 6053.

(vi) *Amount to be withheld.* The calculation of the amount of the income tax withholding with respect to supplemental wage payments is provided for under paragraph (a)(2) through (a)(7) of this section.

(2) *Mandatory flat rate withholding.* If a supplemental wage payment, when added to all supplemental wage payments previously made by one employer (as defined in paragraph (a)(3) of this section) to an employee during the calendar year, exceeds $1,000,000, the rate used in determining the amount

of withholding on the excess (including any excess which is a portion of a supplemental wage payment) shall be equal to the highest rate of tax applicable under section 1 for such taxable years beginning in such calendar year. This flat rate shall be applied without regard to whether income tax has been withheld from the employee's regular wages, without allowance for the number of withholding allowances claimed by the employee on Form W–4, ''Employee's Withholding Allowance Certificate,'' without regard to whether the employee has claimed exempt status on Form W–4, without regard to whether the employee has requested additional withholding on Form W–4, and without regard to the withholding method used by the employer. Withholding under this paragraph (a)(2) is mandatory flat rate withholding.

(3) *Certain persons treated as one employer*—(i) *Persons under common control.* For purposes of paragraph (a)(2) of this section, all persons treated as a single employer under subsection (a) or (b) of section 52 shall be treated as one employer.

(ii) *Agents.* For purposes of paragraph (a)(2) of this section, any payment made to an employee by a third party acting as an agent for the employer (regardless of whether such person shall have been designated as an agent pursuant to section 3504) shall be considered as made by the employer except as provided in paragraph (a)(4)(iii) of this section.

(4) *Treatment of certain items in determining applicability of mandatory flat rate withholding*—(i) *Optional treatment of compensation not subject to income tax withholding.* For purposes of paragraph (a)(2) of this section, employers may determine whether an employee has received $1,000,000 of supplemental wages during a calendar year by including in supplemental wages amounts includible in income but not subject to withholding that are reported as wages, tips, other compensation on Form W–2.

(ii) *Allocation of salary reduction deferrals.* In allocating salary reduction deferral amounts excludable from wages for purposes of determining whether the employer has paid $1,000,000 of supplemental wages under paragraph (a)(2) of this section, employers must allocate such salary reduction deferral amounts to the type of compensation (*i.e.*, gross amounts of regular wage payments or gross amounts of supplemental wage payments) actually being deferred.

(iii) *Optional de minimis exception for certain payments by agents.* For purposes of paragraph (a)(2) of this section, if an agent makes total wage payments (including regular wages and supplemental wages) of less than $100,000 to an individual during any calendar year, an employer or other agent may disregard such payments in determining whether the individual has received $1,000,000 of supplemental wages during the calendar year, and such agent need not consider whether the individual has received other supplemental wages in determining the amount of income tax to be withheld from the payments. An employer may not avail itself of this exception if the employer is making payments to the employee using five or more agents and a principal effect of such use of agents is to reduce the applicability of mandatory flat rate withholding to the employee. For purposes of paragraph (a)(2) of this section, if an agent makes total wage payments of $100,000 or more to an individual during any calendar year, the entire amount of supplemental wages paid by the agent during the calendar year to the employee must be taken into account (by other agents of the employer that make total wage payments to the employee of $100,000 or more, by the agent, and by the employer for which the agent is acting) in determining whether the employee has received $1,000,000 of supplemental wages.

(iv) *Treatment of supplemental wage payment exceeding $1,000,000 cumulative threshold.* In the case of a supplemental wage payment that, when added to all supplemental wage payments previously made by the employer to the employee in the calendar year, results in the employee having received in excess of $1,000,000 supplemental wages for the calendar year, the employer is required to impose withholding under paragraph (a)(2) of this section only on the portion of the payment that is in excess of $1,000,000 (taking into account all prior supplemental wage payments during the year). However, an employer may subject the entire amount of such supplemental wage payment to the withholding imposed by paragraph (a)(2) of this section.

(5) *Withholding on supplemental wages that are not subject to mandatory flat rate withholding.* To the extent that paragraph (a)(2) of this section does not apply to a supplemental wage payment (or a portion of a payment), the amount of the tax required to be withheld on the supplemental wages when paid shall be determined under the rules provided in paragraphs (a)(6) and (7) of this section.

(6) *Aggregate procedure for withholding on supplemental wages*—(i) *Applicability.* The employer is required to determine withholding upon supplemental wages under this paragraph (a)(6) if paragraph (a)(2) of this section does not apply to the payment or portion of the payment and if paragraph (a)(7) of this section may not be used with respect to the payment. In addition, employers have the option of using this paragraph (a)(6) to calculate withholding with respect to a supplemental wage payment, if paragraph (a)(2) of this section does not apply to the payment, but if paragraph (a)(7) of this section could be used with respect to the payment.

(ii) *Procedure.* Provided this procedure applies under paragraph (a)(6)(i) of this section, the supplemental wages, if paid concurrently with wages for a payroll period, are aggregated with the wages paid for such payroll period. If not paid concurrently, the supplemental wages are aggregated with the wages paid or to be paid within the same calendar year for the last preceding payroll period or for the current payroll period, if any. The amount of tax to be withheld is determined as if the aggregate of the supplemental wages and the regular wages constituted a single wage payment for the regular payroll period. The withholding method used by the employer with respect to regular wages would then be used to calculate the withholding on this single wage payment and the employer would take into consideration the Form W–4 submitted by the employee. This procedure is the aggregate procedure for withholding on supplemental wages.

(7) *Optional flat rate withholding on supplemental wages*—(i) *Applicability.* The employer may determine withholding upon supplemental wages under this paragraph (a)(7) if three conditions are met—

(A) Paragraph (a)(2) of this section does not apply to the payment or the portion of the payment;

(B) The supplemental wages are either not paid concurrently with regular wages or are separately stated on the payroll records of the employer; and

(C) Income tax has been withheld from regular wages of the employee during the calendar year of the payment or the preceding calendar year.

(ii) *Procedure.* The determination of the tax to be withheld under paragraph (a)(7)(iii) of this section is made without reference to any payment of regular wages, without allowance for the number of withholding allowances claimed by the employee on Form W–4, and without regard to whether the employee has requested additional withholding on Form W–4. Withholding

under this procedure is optional flat rate withholding.

(iii) *Rate applicable for purposes of optional flat rate withholding.* Provided the conditions of paragraph (a)(7)(i) of this section have been met, the employer may determine the tax to be withheld—

(A) From supplemental wages paid after April 30, 1966, and prior to January 1, 1994, by using a flat percentage rate of 20 percent;

(B) From supplemental wages paid after December 31, 1993, and on or before August 6, 2001, by using a flat percentage rate of 28 percent;

(C) From supplemental wages paid after August 6, 2001, and on or before December 31, 2001, by using a flat percentage rate of 27.5 percent;

(D) From supplemental wages paid after December 31, 2001, and on or before May 27, 2003, by using a flat percentage rate of 27 percent;

(E) From supplemental wages paid after May 27, 2003, and on or before December 31, 2004, by using a flat percentage rate of 25 percent; and

(F) From supplemental wages paid after December 31, 2004, by using a flat percentage rate of 28 percent (or the corresponding rate in effect under section 1(i)(2) for taxable years beginning in the calendar year in which the payment is made).

(8) *Examples.* For purposes of these examples, it is assumed that the rate for purposes of mandatory flat rate withholding for 2007 is 35 percent, and the rate for purposes of optional flat rate withholding for 2007 is 25 percent. The following examples illustrate this paragraph (a):

Example 1. (i) Employee A is an employee of three entities (X, Y, and Z) that are treated as a single employer under section 52(a) or (b). In 2007, X pays regular wages to A on a monthly payroll period for services performed for X, Y, and Z. The regular wages are paid on the third business day of each month. Income tax is withheld from the regular wages of A during the year. A receives only the following supplemental wage payments during 2007 in addition to the regular wages paid by X—

(A) A bonus of $600,000 from X on March 15, 2007;

(B) A bonus of $2,300,000 from Y on November 15, 2007; and

(C) A bonus of $10,000 from Z on December 31, 2007.

(ii) In this *Example 1*, the $600,000 bonus from X is a supplemental wage payment. The withholding on the $600,000 payment from X could be determined under either paragraph (a)(6) or (7) of this section because income tax has been withheld from the regular wages of A. If X elects to use the aggregate procedure under paragraph (a)(6) of this section, the amount of withholding on the supplemental wages would be based on aggregating the supplemental wages and the regular wages paid by X either for the current or last payroll period and treating the total of the regular wages paid by X and the $600,000 supplemental wages as a single wage payment for a regular payroll period. The withholding method used by the employer with respect to regular wages would then be used to calculate the withholding on this single wage payment, and the employer would take into consideration the Form W–4 furnished by the employee.

(iii) In this *Example 1*, the $2,300,000 bonus from Y is a supplemental wage payment. To calculate the withholding on the $2,300,000 supplemental wage payment from Y, the $600,000 of supplemental wages X has already paid to A in 2007 must be taken into account because X and Y are treated as the same employer under section 52(a) or (b). Thus, the withholding on the first $400,000 of the payment (i.e., the cumulative supplemental wages not in excess of $1,000,000) is computed separately from the withholding on the remaining $1,900,000 of the payment (i.e., the amount of the cumulative supplemental wages in excess of $1,000,000). With respect to the first $400,000, the withholding could be computed under either paragraph (a)(6) or (a)(7) of this section, because income tax has been withheld from the regular wages of the employee. If Y elected to withhold income tax using paragraph (a)(7) of this section, Y would withhold on the $400,000 component at 25 percent (pursuant to paragraph (a)(7)(ii)(F) of this section), which would result in $100,000 tax withheld. The remaining $1,900,000 of the bonus would be subject to mandatory flat rate withholding at the maximum rate of tax in effect under section 1 for 2007 (35%) without regard to the Form W–4 submitted by A. The amount withheld from the $1,900,000 would be $665,000. The withholding on the first component and the withholding on the second component then would be added together to determine the total income tax withholding on the supplemental wage payment from Y. Alternatively, under paragraph (a)(4)(iv) of this section, Y could treat the entire $2,300,000 bonus payment as subject to mandatory flat rate withholding at the maximum rate of tax (35%), in which case the amount to be withheld would be 35 percent of $2,300,000, or $805,000.

(iv) The $10,000 bonus paid from Z is also a supplemental wage payment. To calculate the withholding on the $10,000 bonus, the $2,900,000 in cumulative supplemental wages already paid to A in 2007 by X and Y must be taken into account because X, Y, and Z are treated as a single employer. The entire $10,000 bonus would be subject to mandatory flat rate withholding at the maximum rate of tax in effect under section 1 for 2007. The income tax required to be withheld on this payment would be 35 percent of $10,000 or $3,500.

Example 2. Employees B and C work for employer M. Each employee receives a monthly salary of $3,000 in 2007. As a result of the withholding allowances claimed by B, there has been no income tax withholding on the regular wages M pays to B during either 2007 or 2006. In contrast, M has withheld income tax from regular wages M pays to C during 2007. Together with the monthly salary check paid in December 2007 to each employee, M includes a bonus of $2,000, which is the only supplemental wage payment each employee receives from M in 2007. The bonuses are separately stated on the payroll records of M. Because M has withheld no income tax from B's regular wages during either the calendar year of the $2,000 bonus or the preceding calendar year, M cannot use optional flat rate withholding provided under paragraph (a)(7) of this section to calculate the income tax withholding on B's $2,000 bonus. Consequently, M must use the aggregate procedure set forth in paragraph (a)(6) of this section to calculate the income tax withholding due on the $2,000 bonus to B. With respect to the bonus paid to C, M has the option of using either the aggregate procedure provided under paragraph (a)(6) of this section or the optional flat rate withholding provided under paragraph (a)(7) of this section to calculate the income tax withholding due.

Example 3. (i) Employee D works as an employee of Corporation R. Corporations R and T are treated as a single employer under section 52(a) or (b). R makes regular wage payments to Employee D of $200,000 on a monthly basis in 2007, and income tax is withheld from those wages. R pays D a bonus for his services as an employee equal to $3,000,000 on June 30, 2007. Unrelated company U pays D sick pay as an agent of the employer R and such sick pay is supplemental wages pursuant to § 31.3401(a)–1(b)(2). U pays D $50,000 of sick pay on October 31, 2007. Corporation T decides to award bonuses to all employees of R and T, and pays a bonus of $100,000 to D on December 31, 2007. D received no other payments from R, T, or U.

(ii) In chronological summary, D is paid the following wages other than the regular monthly wages paid by R:

(A) June 30, 2007—$3,000,000 (bonus from R);

(B) October 31, 2007—$50,000 (sick pay from U); and

(C) December 31, 2007—$100,000 (bonus from T).

(iii) In this *Example 3*, each payment of wages other than the regular monthly wage payments from R is considered to be supplemental wages for purposes of withholding under § 31.3402(g)–1(a)(2). The amount of regular wages from R is irrelevant in determining when mandatory flat rate withholding on supplemental wages must be applied.

(iv) Because income tax has been withheld on D's regular wages, income tax may be withheld on $1,000,000 of the $3,000,000 bonus paid on June 30, 2007, under either paragraph (a)(6) or (7) of this section. If R elects to use optional flat rate withholding provided under paragraph (a)(7)(ii)(F) of this section, withholding would be calculated at 25 percent of the $1,000,000 portion of the payment and would be $250,000.

(v) Income tax withheld on the following supplemental wage payments (or portion of a payment) as follows is required to be

calculated at the maximum rate in effect under section 1, or 35 percent in 2007—
(A) $2,000,000 of the $3,000,000 bonus paid by R on June 30, 2007; and
(B) all of the $100,000 bonus paid by T on December 31, 2007.

(vi) Pursuant to paragraph (a)(4)(iii) of this section, because the total wage payments made by U, an agent of the employer, to D are less than $100,000, U is permitted to determine the amount of income tax to be withheld without regard to other supplemental wage payments made to the employee. Income tax withholding on the $50,000 in sick pay may be determined under either paragraph (a)(6) or (7) of this section. If U elects to withhold income tax at the flat rate provided under paragraph (a)(7)(ii)(F) of this section, withholding on the $50,000 of sick pay would be calculated at 25 percent of the $50,000 payment and would be $12,500. Alternatively, U may choose to take account of the $3,000,000 in supplemental wages paid by the employer during 2007 prior to payment of the $50,000 sick pay, and withholding on the $50,000 of sick pay could be calculated applying the mandatory flat rate of 35 percent, resulting in withholding of $17,500 on the $50,000 payment.

Example 4. (i) Employer J has decided it wants to grant its employee B a $1,000,000 net bonus (after withholding) to be paid in 2007. Employer J has withheld income tax from the regular wages of the employee. Employer J has made no other supplemental wage payments to B during the year. The rate for mandatory flat rate withholding in effect in the year in which the payment is made is 35 percent, and the rate for optional flat rate withholding in effect is 25 percent.

(ii) This *Example 4* requires grossing up the supplemental wage payment to determine the gross wages necessary to result in a net payment of $1,000,000. If the employer elected to use optional flat rate withholding, the first $1,000,000 of the wages would be subject to 25 percent withholding. However, any wages above that, including amounts representing gross-up payments, would be subject to mandatory 35 percent withholding. The withholding applicable to the first $1,000,000 (i.e., $250,000) would thus be required to be grossed-up at a 35 percent rate to determine the gross wage amount in excess of $1,000,000. Thus, the wages in excess of $1,000,000 would be equal to $250,000 divided by .65 (computed by subtracting .35 from 1) or $384,615.38. Thus the total supplemental wage payment, taking into account income tax withholding only (and not Federal Insurance Contributions Act taxes), to B would be $1,384,615.38, and the total withholding with respect to the payment if Employer J elected optional flat rate withholding with respect to the first $1,000,000, would be $384,615.38.

(9) *Certain noncash payments to retail commission salesmen.* For provisions relating to the treatment of wages that are not subject to paragraph (a)(2) of this section and that are paid other than in cash to retail commission salesmen, see § 31.3402(j)–1.

(10) *Alternative methods.* The Secretary may provide by publication in the Internal Revenue Bulletin (see § 601.601(d)(2)(ii)(*b*) of this chapter) for alternative withholding methods that will allow an employer to meet its responsibility for the mandatory flat rate withholding required by paragraph (a)(2) of this section.

(b) *Special rule where aggregate withholding exemption exceeds wages paid*—(1) *Procedure.* This rule does not apply to the extent that paragraph (a)(2) of this section applies to the supplemental wage payment. * * *

(2) *Applicability.* The rules prescribed in this paragraph (b) shall, at the election of the employer, be applied in lieu of the rules prescribed in paragraph (a) of this section except that this paragraph shall not be applicable in any case in which the payroll period of the employee is less than one week or to the extent that paragraph (a)(2) of this section applies to the supplemental wage payment.

* * * * *

■ **Par. 5.** Section 31.3402(j)–1 is amended by adding a new sentence at the beginning of paragraph (a)(2) to read as follows:

§ 31.3402(j)–1 Remuneration other than in cash for service performed by retail commission salesman.

(a) * * *

(2) Section 3402(j) and this section are not applicable with respect to wages paid to the employee that are subject to withholding under § 31.3402(g)–1(a)(2). * * *

* * * * *

■ **Par. 6.** Section 31.3402(n)–1 is revised and the authority citation at the end of the section is removed to read as follows:

§ 31.3402(n)–1 Employees incurring no income tax liability.

(a) *In general.* Notwithstanding any other provision of this subpart (except to the extent a payment of wages is subject to withholding under § 31.3402(g)–1(a)(2)), an employer shall not deduct and withhold any tax under chapter 24 upon a payment of wages made to an employee, if there is in effect with respect to the payment a withholding exemption certificate furnished to the employer by the employee which certifies that—

(1) The employee incurred no liability for income tax imposed under subtitle A of the Internal Revenue Code for his preceding taxable year; and

(2) The employee anticipates that he will incur no liability for income tax imposed under subtitle A for his current taxable year.

(b) *Mandatory flat rate withholding.* To the extent wages are subject to income tax withholding under § 31.3402(g)–1(a)(2), such wages are subject to such income tax withholding regardless of whether a withholding exemption certificate under section 3402(n) and the regulations thereunder has been furnished to the employer.

(c) *Rules about withholding exemption certificates.* For rules relating to invalid withholding exemption certificates, see § 31.3402(f)(2)–1(e), and for rules relating to disregarding certain withholding exemption certificates on which an employee claims a complete exemption from withholding, see § 31.3402(f)(2)–1T(g).

(d) *Examples.* The following examples illustrate this section:

Example 1. Employee A, an unmarried, calendar-year basis taxpayer, files his income tax return for 2005 on April 10, 2006. A has adjusted gross income of $5,000 and is not liable for any income tax. He had $180 of income tax withheld during 2005. A anticipates that his gross income for 2006 will be approximately the same amount, and that he will not incur income tax liability for that year. On April 20, 2006, A commences employment and furnishes his employer a withholding exemption certificate certifying that he incurred no liability for income tax imposed under subtitle A for 2005, and that he anticipates that he will incur no liability for income tax imposed under subtitle A for 2006. A's employer shall not deduct and withhold on payments of wages made to A on or after April 20, 2006. Under § 31.3402(f)(4)–2(c), unless A furnishes a new withholding exemption certificate certifying the statements described in paragraph (a) of this section to his employer, his employer is required to deduct and withhold upon payments of wages to A made after February 15, 2007.

Example 2. Assume the facts are the same as in *Example 1* except that A had been employed by his employer prior to April 20, 2006, and had furnished his employer a withholding exemption certificate prior to furnishing the withholding exemption certificate certifying the statements described in paragraph (a) of this section on April 20, 2006. Under section 3402(f)(3)(B)(i), his employer would be required to give effect to the new withholding exemption certificate no later than the beginning of the first payroll period ending (or the first payment of wages made without regard to a payroll period) on or after May 20, 2006. However, under section 3402(f)(3)(B)(ii), his employer could, if it chose, make the new withholding exemption certificate effective with respect to any payment of wages made on or after April 20, 2006, and before the effective date mandated by section 3402(f)(3)(B)(i). Under § 31.3402(f)(4)–2(c), unless A furnishes a new withholding exemption certificate certifying the statements described in § 31.3402(n)–1(a) to his employer, his employer is required to deduct and withhold upon payments of wages to A made after February 15, 2007.

Example 3. Assume the facts are the same as in *Example 1* except that for 2005 A has

taxable income of $8,000, income tax liability of $839, and income tax withheld of $1,195. Although A received a refund of $356 due to income tax withholding of $1,195, he may not certify on his withholding exemption certificate that he incurred no liability for income tax imposed by subtitle A for 2005.

Mark E. Matthews,

Deputy Commissioner for Services and Enforcement.

Approved: July 14, 2006.

Eric Solomon,

Acting Deputy Assistant Secretary of the Treasury (Tax Policy).

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NATIONAL ARCHIVES AND RECORDS ADMINISTRATION

36 CFR Parts 1253 and 1280

RIN 3095–AB52

[Docket NARA–06–0007]

Changes in NARA Research Room and Museum Hours

AGENCY: National Archives and Records Administration (NARA).

ACTION: Interim final rule; request for comment.

SUMMARY: NARA is revising its regulations with respect to research room and museum hours at its facilities in the Washington, DC, area. The operating costs for these facilities have been increasing every year, particularly for staffing, security services and utilities. In these times of fiscal restraint, NARA has determined reluctantly that it is necessary to curtail service during time frames when only a small percentage of our users are present to ensure that we are able to provide quality services to customers during the times of greatest public use while we are also conducting other mission-critical duties. This regulation will affect individuals who use our archival research rooms in the National Archives Building and National Archives at College Park facility, and individuals who visit the National Archives Experience and the Rotunda exhibits in the National Archives Building. This rule also makes minor edits to related provisions, which are discussed in the **SUPPLEMENTARY INFORMATION** section, and adds the archival research room at the National Personnel Records Center to our list of research facilities.

DATES: This interim final rule is effective October 2, 2006. Comments on this interim final rule must be received by September 8, 2006 at the address shown below. NARA intends to publish any changes to the rule resulting from this comment period before the October 2, 2006 effective date.

A public meeting on this interim final rule will be held on August 3, 2006 at 1 p.m. See the **ADDRESSES** paragraph for additional information.

ADDRESSES: NARA invites interested persons to submit comments on this interim final rule. Comments may be submitted by any of the following methods:

- Federal eRulemaking Portal: *http://www.regulations.gov.* Follow the instructions for submitting comments.
- Fax: Submit comments by facsimile transmission to 301–837–0319.
- Mail: Send comments to Regulations Comments Desk (NPOL), Room 4100, Policy and Planning Staff, National Archives and Records Administration, 8601 Adelphi Road, College Park, MD 20740–6001.
- Hand Delivery or Courier: Deliver comments to 8601 Adelphi Road, College Park, MD.

The public meeting will be held at the Jefferson Room in the National Archives Building, Washington, DC 20408, on August 3, 2006 at 1 p.m. Please enter through the Constitution Avenue Special Events entrance (Constitution Ave. NW., between 7th and 9th Streets, NW.). Reservations are not required but space may be limited.

FOR FURTHER INFORMATION CONTACT: Nancy Allard at 301–837–1477 or Jennifer Davis Heaps at 301–837–1801 or via fax number 301–837–0319.

SUPPLEMENTARY INFORMATION: A discussion of the changes we are making in this rule follows.

Research Room Hours in DC Area Facilities

Our research center and Central Research Room in the National Archives Building and the research rooms at the National Archives at College Park facility are currently open for research Monday through Friday from 8:45 a.m. to 5 p.m.; on Tuesday, Thursday and Friday evenings from 5 p.m. to 9 p.m.; and Saturdays from 8:45 a.m. to 4:45 p.m. This interim final rule would eliminate Saturday hours and change the research room hours to 9 a.m. to 5 p.m. on weekdays, more closely reflecting NARA official business hours in those facilities. The new research room hours are specified in §§ 1253.1(a) and 1253.2(b). We are also amending § 1253.8 since we no longer will have Saturday hours.

During the evening and Saturday hours we must provide staff to supervise the seven research rooms and assist researchers. We also require additional security guard presence and incur additional utility costs because the buildings are open to the public. We determined that carrying out the necessary reduction in hours by eliminating evening and Saturday hours would inconvenience the fewest researchers. Researchers who conduct research in original archival records in the evening or on Saturday currently must make a reference request in-person before 3:30 on weekdays to have the records identified and retrieved from the stack areas for their research use; no records are retrieved during those extended hours. NARA had 96,393 researcher visits in FY 2005 in our DC area research rooms. The following charts show that at both facilities, significantly fewer researchers used the research rooms during evening and Saturday hours in FY 2005:

2005 EVENING/SATURDAY RESEARCH ROOM USAGE AT THE NATIONAL ARCHIVES BUILDING

National Archives Building only	Number of researchers		Researchers as a percentage of total researchers during the quarter	
	Evening research room usage from 5:30 p.m. forward	Saturday research room usage	Evening research room usage from 5:30 p.m. forward (percent)	Saturday research room usage (percent)
Jan–Mar 2005	968	691	14	10
Apr–Jun 2005	1,061	653	12	8
July–Sep 2005	1,268	823	13	8
Oct–Dec 2005	966	594	15	9

2005 EVENING/SATURDAY RESEARCH ROOM USAGE AT THE NATIONAL ARCHIVES BUILDING—Continued

National Archives Building only	Number of researchers		Researchers as a percentage of total researchers during the quarter	
	Evening research room usage from 5:30 p.m. forward	Saturday research room usage	Evening research room usage from 5:30 p.m. forward (percent)	Saturday research room usage (percent)
Total Evening/Saturday Use during 2005	4,263	2,761	13	9

2005 EVENING/SATURDAY RESEARCH ROOM USAGE AT THE NATIONAL ARCHIVES AT COLLEGE PARK

National Archives at College Park only	Number of researchers		Researchers as a percentage of total researchers during the quarter	
	Evening research room usage from 5:30 p.m. forward	Saturday research room usage	Evening research room usage from 5:30 p.m. forward (percent)	Saturday research room usage (percent)
Jan–Mar 2005	1,992	734	19	7
Apr–Jun 2005	2,314	798	17	6
July–Sep 2005	2,434	817	17	6
Oct–Dec 2005	2,004	602	17	5
Total Evening/Saturday Use during 2005	8,744	2,951	17	6

Research Room Hours in Regional Archives

Our regulations only list the core Monday–Friday hours for NARA's regional archives (Tuesday–Saturday hours for the Southeast Region in Morrow, GA) in 36 CFR 1253.7, which are not changing. Currently, most of our regional archives research rooms also are open one evening per week and/or certain Saturdays of the month primarily for microfilm research. Researchers who conduct research in original archival records in the evening or on Saturday must make a reference request in-person before 3:30 on weekdays to have the records identified and retrieved from the stack areas for their research use; no records are retrieved during those extended hours. The extended hours, which are subject to more frequent modification, are listed on the NARA Web site (*http://www.archives.gov*) and posted in the regional research rooms. In some of the regional archives, we are reducing extended hours beginning October 2, 2006.

We are making one unrelated change to § 1253.7 to add the archival research room at the National Personnel Records Center in St. Louis, MO.

Museum Hours at the National Archives Building

This interim final rule also modifies the hours the exhibit areas in the National Archives Building, Washington, DC, are open to the public. Currently the *National Archives Experience* (our Washington DC museum) including the Rotunda for the Charters of Freedom (displaying the Declaration of Independence, Constitution, and Bill of Rights) is open to the public as follows:

- The day after Labor Day through March 31, 10 a.m. to 5:30 p.m. (closed on December 25);
- April 1 through the Friday before Memorial Day, 10 a.m. to 7 p.m.;
- Memorial Day weekend through Labor Day, 10 a.m. to 9 p.m.

We are revising § 1280.62 to make the public hours the day after Labor Day through March 14, 10 a.m. to 5:30 p.m., and March 15 through Labor Day, 10 a.m. to 7 p.m. The building will be closed on Thanksgiving and December 25. In addition, because transit through the building and through the line to view the Charters of Freedom cannot usually be completed in less than a 30 minute visit, we are establishing a policy of ''last admission'' at least 30 minutes before close. This policy, which is followed by many museums, will allow us to clear the exhibit areas of visitors at the stated closing time and ensure that visitors coming into the building have at least some opportunity to see the Charters of Freedom. Finally, because the renovation of the National Archives Building provides direct street-level access to the building entrance on Constitution Avenue, we are rewording § 1280.60 to remove directions for disabled and persons with strollers to use the Pennsylvania Avenue entrance to the building.

Although we are reducing the hours exhibit areas in the National Archives Building, Washington, DC, are open during the summer months (Memorial Day through Labor Day), the new summer hours are consistent with those at the National Museum of American History (10 a.m.–6:30 p.m.). We have found that the last two hours of the day in the summer have the lowest average attendance, so this action will affect the fewest visitors on those days. By changing to a two season calendar with the high season beginning March 15, we are increasing the hours the exhibit areas are open during peak demand (school break, Cherry Blossom Festival) in late March. As with the change in research room hours, the changes in hours for the exhibit areas will significantly reduce our security guard expenses.

As we noted in the **SUMMARY** paragraph of this preamble, NARA must carry out multiple mission-critical activities. There are many actions that must be carried out in order to provide access to archival records in NARA research rooms; to assist researchers via on-line descriptions in our Archival Research Catalog or via written reference requests; and to develop public programs and exhibits. When archival records are transferred to NARA's custody from the creating agency or at the end of a Presidential Administration, NARA staff must organize these records, assess and address their condition, carry out declassification review on them as needed, describe them, and otherwise prepare them for safe and efficient use by researchers. The actions that we are

taking in this interim final rule will assist us in conducting all of our mission-critical programs.

The issuance of an ''interim-final rule'' may be followed under the ''good-cause'' exemption of 5 U.S.C. 553(b)(3)(B) as ''impracticable'' or ''contrary to the public interest.'' In this instance, good cause exists because NARA must institute these changes at the beginning of the next fiscal year, which does not leave sufficient time for NARA to issue a final rule following the 45 day comment period under this notice.

This rule is not a significant regulatory action for the purposes of Executive Order 12866 and has not been reviewed by the Office of Management and Budget. As required by the Regulatory Flexibility Act, I certify that this rule will not have a significant impact on a substantial number of small entities because it affects individual researchers and museum visitors. This regulation does not have any federalism implications. This rule is not a major rule as defined in 5 U.S.C. Chapter 8, Congressional Review of Agency Rulemaking.

List of Subjects

36 CFR Part 1253

Archives and records.

36 CFR Part 1280

Federal buildings and facilities.

■ For the reasons set forth in the preamble, NARA amends chapter XII of title 36, Code of Federal Regulations, as follows:

PART 1253—LOCATION OF NARA FACILITIES AND HOURS OF USE

■ 1. The authority citation for part 1253 continues to read as follows:

Authority: 44 U.S.C. 2104(a).

■ 2. Amend § 1253.1 by revising paragraph (a) to read as follows:

§ 1253.1 National Archives Building.

(a) The National Archives Building is located at 700 Pennsylvania Avenue, NW., Washington, DC 20408. Business hours are 8:45 a.m. to 5:15 p.m., Monday through Friday, except Federal holidays when the building is closed. Hours for the Research Center and the Central Research room are 9 a.m. to 5 p.m., Monday through Friday, except Federal holidays.

* * * * *

■ 2. Amend § 1253.2 by revising paragraph (b) to read as follows:

§ 1253.2 National Archives at College Park.

* * * * *

(b) Research complex hours are 9 a.m. to 5 p.m., Monday through Friday, except Federal holidays.

* * * * *

■ 3. Amend § 1253.7 by adding a new paragraph (n) to read as follows:

§ 1253.7 Regional Archives.

* * * * *

(n) National Personnel Records Center archival research room is located at 9700 Page Ave., St. Louis, MO 63132–5100. The hours are 10 a.m. to 4 p.m., Tuesday through Friday, except Federal holidays.

■ 4. Revise § 1253.8 to read as follows:

§ 1253.8 Are NARA research room facilities closed on Federal holidays?

NARA research room facilities are closed on all Federal holidays.

PART 1280—PUBLIC USE OF NARA FACILITIES

■ 5. The authority citation for part 1280 continues to read as follows:

Authority: 44 U.S.C. 2102 notes, 2104(a), 2112(a)(1)(A)(iii), 2903.

■ 6. Amend § 1280.60 by revising paragraph (b) to read as follows:

§ 1280.60 Where do I enter the National Archives Building in Washington, DC?

* * * * *

(b) To visit the exhibit areas of the National Archives Building, including the National Archives Experience and Rotunda, you must enter through the Constitution Avenue entrance.

■ 7. Revise § 1280.62 to read as follows:

§ 1280.62 When are the exhibit areas in the National Archives Building open?

The exhibit areas are open to the public from 10 a.m. until 5:30 p.m. from the day after Labor Day through March 14. The exhibit areas are open from 10 a.m. until 7 p.m. from March 15 through Labor Day. Last admission to the exhibit areas of the building will be no later than 30 minutes before the stated closing hour. The Archivist of the United States reserves the authority to close the exhibit areas to the public at any time for special events or other purposes. The building is closed on Thanksgiving and December 25.

Dated: July 18, 2006.

Allen Weinstein,

Archivist of the United States.

[FR Doc. E6–11763 Filed 7–24–06; 8:45 am]

BILLING CODE 7515–01–P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 679

[Docket No. 060216044–6044–01; I.D. 072006C]

Fisheries of the Exclusive Economic Zone Off Alaska; Northern Rockfish in the Central Regulatory Area of the Gulf of Alaska

AGENCY: National Marine Fisheries Service (NMFS), National Oceanic and Atmospheric Administration (NOAA), Commerce.

ACTION: Temporary rule; closure.

SUMMARY: NMFS is prohibiting directed fishing for northern rockfish in the Central Regulatory Area of the Gulf of Alaska (GOA). This action is necessary to prevent exceeding the 2006 total allowable catch (TAC) of northern rockfish in the Central Regulatory Area of the GOA.

DATES: Effective 1200 hrs, Alaska local time (A.l.t.), July 21, 2006, through 2400 hrs, A.l.t., December 31, 2006.

FOR FURTHER INFORMATION CONTACT: Josh Keaton, 907–586–7228.

SUPPLEMENTARY INFORMATION: NMFS manages the groundfish fishery in the GOA exclusive economic zone according to the Fishery Management Plan for Groundfish of the Gulf of Alaska (FMP) prepared by the North Pacific Fishery Management Council under authority of the Magnuson-Stevens Fishery Conservation and Management Act. Regulations governing fishing by U.S. vessels in accordance with the FMP appear at subpart H of 50 CFR part 600 and 50 CFR part 679.

The 2006 TAC of northern rockfish in the Central Regulatory Area of the GOA is 3,608 metric tons (mt) as established by the 2006 and 2007 harvest specifications for groundfish of the GOA (71 FR 10870, March 3, 2006).

In accordance with § 679.20(d)(1)(i), the Administrator, Alaska Region, NMFS (Regional Administrator), has determined that the 2006 TAC of northern rockfish in the Central Regulatory Area of the GOA will soon be reached. Therefore, the Regional Administrator is establishing a directed fishing allowance of 3,558 mt, and is setting aside the remaining 50 mt as bycatch to support other anticipated groundfish fisheries. In accordance with § 679.20(d)(1)(iii), the Regional Administrator finds that this directed fishing allowance has been reached. Consequently, NMFS is prohibiting

directed fishing for northern rockfish in the Central Regulatory Area of the GOA.

After the effective date of this closure the maximum retainable amounts at § 679.20(e) and (f) apply at any time during a trip.

Classification

This action responds to the best available information recently obtained from the fishery. The Assistant Administrator for Fisheries, NOAA (AA), finds good cause to waive the requirement to provide prior notice and opportunity for public comment pursuant to the authority set forth at 5 U.S.C. 553(b)(B) as such requirement is impracticable and contrary to the public interest. This requirement is impracticable and contrary to the public interest as it would prevent NMFS from responding to the most recent fisheries data in a timely fashion and would delay the closure of northern rockfish in the Central Regulatory Area of the GOA. NMFS was unable to publish a notice providing time for public comment because the most recent, relevant data only became available as of July 19, 2006.

The AA also finds good cause to waive the 30 day delay in the effective date of this action under 5 U.S.C. 553(d)(3). This finding is based upon the reasons provided above for waiver of prior notice and opportunity for public comment.

This action is required by § 679.20 and is exempt from review under Executive Order 12866.

Authority: 16 U.S.C. 1801 *et seq.*

Dated: July 20, 2006.

Alan D. Risenhoover,

Acting Director, Office of Sustainable Fisheries, National Marine Fisheries Service.

[FR Doc. 06–6449 Filed 7–20–06; 2:18 pm]

BILLING CODE 3510–22–S

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 679

[Docket No. 060216044–6044–01; I.D. 072006B]

Fisheries of the Exclusive Economic Zone Off Alaska; Pelagic Shelf Rockfish in the Central Regulatory Area of the Gulf of Alaska

AGENCY: National Marine Fisheries Service (NMFS), National Oceanic and Atmospheric Administration (NOAA), Commerce.

ACTION: Temporary rule; closure.

SUMMARY: NMFS is prohibiting directed fishing for pelagic shelf rockfish in the Central Regulatory Area of the Gulf of Alaska (GOA). This action is necessary to prevent exceeding the 2006 total allowable catch (TAC) of pelagic shelf rockfish in the Central Regulatory Area of the GOA.

DATES: Effective 1200 hrs, Alaska local time (A.l.t.), July 21, 2006, through 2400 hrs, A.l.t., December 31, 2006.

FOR FURTHER INFORMATION CONTACT: Josh Keaton, 907–586–7228.

SUPPLEMENTARY INFORMATION: NMFS manages the groundfish fishery in the GOA exclusive economic zone according to the Fishery Management Plan for Groundfish of the Gulf of Alaska (FMP) prepared by the North Pacific Fishery Management Council under authority of the Magnuson-Stevens Fishery Conservation and Management Act. Regulations governing fishing by U.S. vessels in accordance with the FMP appear at subpart H of 50 CFR part 600 and 50 CFR part 679.

The 2006 TAC of pelagic shelf rockfish in the Central Regulatory Area of the GOA is 3,262 metric tons (mt) as established by the 2006 and 2007 harvest specifications for groundfish of the GOA (71 FR 10870, March 3, 2006).

In accordance with § 679.20(d)(1)(i), the Administrator, Alaska Region, NMFS (Regional Administrator), has determined that the 2006 TAC of pelagic shelf rockfish in the Central Regulatory Area of the GOA will soon be reached. Therefore, the Regional Administrator is establishing a directed fishing allowance of 3,212 mt, and is setting aside the remaining 50 mt as bycatch to support other anticipated groundfish fisheries. In accordance with § 679.20(d)(1)(iii), the Regional Administrator finds that this directed fishing allowance has been reached. Consequently, NMFS is prohibiting directed fishing for pelagic shelf rockfish in the Central Regulatory Area of the GOA.

After the effective date of this closure the maximum retainable amounts at § 679.20(e) and (f) apply at any time during a trip.

Classification

This action responds to the best available information recently obtained from the fishery. The Assistant Administrator for Fisheries, NOAA (AA), finds good cause to waive the requirement to provide prior notice and opportunity for public comment pursuant to the authority set forth at 5 U.S.C. 553(b)(B) as such requirement is impracticable and contrary to the public interest. This requirement is impracticable and contrary to the public interest as it would prevent NMFS from responding to the most recent fisheries data in a timely fashion and would delay the closure of pelagic shelf rockfish in the Central Regulatory Area of the GOA. NMFS was unable to publish a notice providing time for public comment because the most recent, relevant data only became available as of July 19, 2006.

The AA also finds good cause to waive the 30 day delay in the effective date of this action under 5 U.S.C. 553(d)(3). This finding is based upon the reasons provided above for waiver of prior notice and opportunity for public comment.

This action is required by § 679.20 and is exempt from review under Executive Order 12866.

Authority: 16 U.S.C. 1801 *et seq.*

Dated: July 20, 2006.

Alan D. Risenhoover,

Acting Director, Office of Sustainable Fisheries, National Marine Fisheries Service.

[FR Doc. 06–6448 Filed 7–20–06; 2:18 pm]

BILLING CODE 3510–22–S

Proposed Rules

Federal Register
Vol. 71, No. 142
Tuesday, July 25, 2006

This section of the FEDERAL REGISTER contains notices to the public of the proposed issuance of rules and regulations. The purpose of these notices is to give interested persons an opportunity to participate in the rule making prior to the adoption of the final rules.

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. 2001–NM–183–AD]

RIN 2120–AA64

Airworthiness Directives; McDonnell Douglas Model DC–8–55, DC–8F–54, and DC–8F–55 Airplanes; and DC–8–60, DC–8–70, DC–8–60F, and DC–8–70F Series Airplanes

AGENCY: Federal Aviation Administration, DOT.

ACTION: Supplemental notice of proposed rulemaking; reopening of comment period.

SUMMARY: This document revises an earlier proposed airworthiness directive (AD), applicable to certain McDonnell Douglas Model DC–8 airplanes. That proposed AD would have required a one-time inspection for cracks of the aft fuselage skin panel at the longeron 28 skin splice; repair of any cracks detected; and reporting of the findings of the inspection to the manufacturer. This new action revises the proposed AD by removing airplanes from the applicability; and adds repetitive inspections for cracks in the same area, a one-time inspection for previous repairs, and repair if necessary. This new action also would require reporting the inspection findings to the manufacturer, and would provide optional actions for extending the repetitive inspection intervals. The requirements proposed by this new action are intended to detect and correct cracks in the aft fuselage skin at the longeron 28 skin splice, which could lead to loss of structural integrity of the aft fuselage, resulting in rapid decompression of the airplane. This action is intended to address the identified unsafe condition.

DATES: Comments must be received by August 21, 2006.

ADDRESSES: Submit comments in triplicate to the Federal Aviation Administration (FAA), Transport Airplane Directorate, ANM–114, Attention: Rules Docket No. 2001–NM–183–AD, 1601 Lind Avenue, SW., Renton, Washington 98057–3356. Comments may be inspected at this location between 9 a.m. and 3 p.m., Monday through Friday, except Federal holidays. Comments may be submitted via fax to (425) 227–1232. Comments may also be sent via the Internet using the following address: *9-anm-nprmcomment@faa.gov.* Comments sent via fax or the Internet must contain ''Docket No. 2001–NM–183–AD'' in the subject line and need not be submitted in triplicate. Comments sent via the Internet as attached electronic files must be formatted in Microsoft Word 97 or 2000 or ASCII text.

The service information referenced in the proposed AD may be obtained from Boeing Commercial Airplanes, Long Beach Division, 3855 Lakewood Boulevard, Long Beach, California 90846, Attention: Data and Service Management, Dept. C1–L5A (D800–0024). This information may be examined at the FAA, Transport Airplane Directorate, 1601 Lind Avenue, SW., Renton, Washington; or at the FAA, Los Angeles Aircraft Certification Office, 3960 Paramount Boulevard, Lakewood, California.

FOR FURTHER INFORMATION CONTACT: Jon Mowery, Aerospace Engineer, Airframe Branch, ANM–120L, FAA, Los Angeles Aircraft Certification Office, 3960 Paramount Boulevard, Lakewood, California 90712–4137; telephone (562) 627–5322; fax (562) 627–5210.

SUPPLEMENTARY INFORMATION:

Comments Invited

Interested persons are invited to participate in the making of the proposed AD by submitting such written data, views, or arguments as they may desire. Communications shall identify the Rules Docket number and be submitted in triplicate to the address specified above. All communications received on or before the closing date for comments, specified above, will be considered before taking action on the proposed AD. The proposals contained in this action may be changed in light of the comments received.

Submit comments using the following format:

- Organize comments issue-by-issue. For example, discuss a request to change the compliance time and a request to change the service bulletin reference as two separate issues.
- For each issue, state what specific change to the proposed AD is being requested.
- Include justification (*e.g.*, reasons or data) for each request.

Comments are specifically invited on the overall regulatory, economic, environmental, and energy aspects of the proposed AD. All comments submitted will be available, both before and after the closing date for comments, in the Rules Docket for examination by interested persons. A report summarizing each FAA-public contact concerned with the substance of this proposed AD will be filed in the Rules Docket.

Commenters wishing the FAA to acknowledge receipt of their comments submitted in response to this action must submit a self-addressed, stamped postcard on which the following statement is made: ''Comments to Docket Number 2001–NM–183–AD.'' The postcard will be date stamped and returned to the commenter.

Availability of NPRMs

Any person may obtain a copy of this NPRM by submitting a request to the FAA, Transport Airplane Directorate, ANM–114, Attention: Rules Docket No. 2001–NM–183–AD, 1601 Lind Avenue, SW., Renton, Washington 98057–33056.

Discussion

A proposal to amend part 39 of the Federal Aviation Regulations (14 CFR part 39) to add an airworthiness directive (AD), applicable to certain McDonnell Douglas Model DC–8–11, DC–8–12, DC–8–21, DC–8–31, DC–8–32, DC–8–33, DC–8–41, DC–8–42, and DC–8–43 airplanes; DC–8–50 series airplanes; DC–8F–54 and DC–8F–55 airplanes; DC–8–60 series airplanes; DC–8–60F series airplanes; DC–8–70 series airplanes; and DC–8–70F series airplanes; all with flat aft pressure bulkheads; was published as a notice of proposed rulemaking (NPRM) in the **Federal Register** on October 8, 2003 (68 FR 58044). That NPRM would have required a one-time inspection of the aft fuselage skin panel at the longeron 28 skin splice for cracks; repair of any cracks detected; and reporting of the findings of the inspection to the manufacturer. That NPRM was prompted by a report indicating that a

crack was found in the aft fuselage skin at the longeron 28 skin splice just forward of the aft pressure bulkhead. That condition, if not corrected, could lead to loss of structural integrity of the aft fuselage, resulting in rapid decompression of the airplane.

Actions Since Issuance of Previous Proposal

Since the issuance of that NPRM, Boeing has issued a service bulletin that addresses the unsafe condition. No service bulletin was cited as part of the actions in the original NPRM. In that NPRM we stated that the manufacturer was developing service information which could include repetitive inspections and repairs. The manufacturer has now released that service bulletin and this supplemental NPRM results from that new service information.

In addition, we received one comment regarding the procedures in the original NPRM. Due consideration has been given to the one comment received in response to the NPRM.

Request To Withdraw the NPRM

UPS requests that we withdraw the original NPRM because it believes the one crack it found in its fleet was an isolated incident that does not indicate an unsafe condition exists for the remaining fleet.

We disagree. Since the original NPRM was released, two other operators reported cracks in the same area. We have not changed the supplemental NPRM in this regard.

Explanation of Relevant Service Information

We have reviewed Boeing Alert Service Bulletin DC8–53A080, dated June 22, 2004. This service bulletin describes procedures for a one-time visual inspection to determine if there are previous repairs of the aft fuselage skin panel at the longeron 28 skin splice.

For areas that have not been previously repaired, the service bulletin describes procedures for repetitive general visual inspections and high-frequency eddy current (HFEC) inspections for discrepancies of the unrepaired areas; and repair if necessary. Discrepancies can include distortion, damage, cracks, corrosion, and loose parts. The service bulletin specifies doing the inspections at longeron 28 between the bolted connection of the tail section to forward of the flat aft pressure bulkhead, on both the left and right sides.

The service bulletin gives operators options for three HFEC inspection types: HFEC magneto-optic/eddy current imager, HFEC surface probe, and HFEC sliding probe. The service bulletin also describes procedures for related investigative and corrective actions if necessary. The related investigative action is a visual inspection for cracks of fasteners adjacent to detected skin cracks. The corrective action is replacing failed fasteners or repairing the skin crack locally, as applicable. The service bulletin also describes procedures for reporting inspection findings to the manufacturer.

For areas that have been previously repaired, the service bulletin specifies that operators should remove the previous repairs within 2 years after the general visual inspection, and install a local repair in accordance with Boeing DC–8 Service Rework Drawing SR08530032, dated January 13, 2004, including Boeing Parts List PL SR08530032, dated January 7, 2004, Boeing Advance Engineering Order, Advanced Drawing Change A, dated April 1, 2004, and Boeing Engineering Order, dated January 13, 2004; or contact Boeing for disposition.

Installing a full-length preventive modification, doing a full-length repair, or doing a local repair, terminates the repetitive inspections specified in this supplemental NPRM for un-repaired areas. After installing the preventive modification, full-length repair, or local repair, the service bulletin specifies repetitive external visual, general visual, HFEC, or low-frequency eddy current inspections, as applicable, for discrepancies of the repaired areas, along all four edges of the doubler. The service bulletin specifies doing the repetitive inspections in accordance with the service rework drawing or the service bulletin, as applicable; and repairing any discrepancy in accordance with the service rework drawing or the service bulletin, as applicable. Accomplishment of the actions specified in the service bulletin is intended to adequately address the identified unsafe condition.

Difference Between Supplemental NPRM and Service Bulletin

The service bulletin specifies to contact the manufacturer for instructions on how to repair certain conditions, but this supplemental NPRM would require repairing those conditions in one of the following ways:

- Using a method that we approve; or
- Using data that meet the certification basis of the airplane, and that have been approved by an Authorized Representative for the Boeing Commercial Airplanes Delegation Option Authorization Organization whom we have authorized to make those findings.

Reporting Requirements

This supplemental NPRM would require that operators report the positive results of the inspections to the FAA. Because the cause of the cracking is not known, these required inspection reports will help determine the extent of the cracking in the affected fleet. Based on the results of these reports, we may determine that further corrective action is warranted.

Explanation of Changes to Applicability

We have revised the applicability of the original NPRM to exclude certain airplanes. McDonnell Douglas Model DC–8–11, DC–8–12, DC–8–21, DC–8–31, DC–8–32, DC–8–33, DC–8–41, DC–8–42, and DC–8–43 airplanes; and certain DC–8–50 series airplanes; were included in the original NPRM. We have determined that these airplanes are not subject to the unsafe condition addressed by this proposed AD. Boeing's service bulletin further defines the airplane models that are affected by this proposed AD.

We have also revised the applicability of the original NPRM to identify model designations as published in the most recent type certificate data sheet for the affected models.

Explanation of Additional Changes Made to the NPRM

Boeing Commercial Airplanes has received a Delegation Option Authorization (DOA). We have revised this action to delegate the authority to approve an alternative method of compliance for any repair required by this AD to an Authorized Representative for the Boeing Commercial Airplanes DOA rather than a Designated Engineering Representative (DER).

We have revised this action to clarify the appropriate procedure for notifying the principal inspector before using any approved Alternative Method of Compliance (AMOC) on any airplane to which the AMOC applies.

After the original NPRM was issued, we reviewed the figures we have used over the past several years to calculate AD costs to operators. To account for various inflationary costs in the airline industry, we find it necessary to increase the labor rate used in these calculations from $65 per work hour to $80 per work hour. The cost impact information, below, reflects this increase in the specified hourly labor rate.

Clarification of Inspection Language

Where the Accomplishment Instructions of the Boeing service

bulletin specify doing a visual inspection, this supplemental NPRM calls that inspection a ''general visual inspection.'' A definition of a general visual inspection is included in a note in the regulatory text.

Conclusion

Since these changes expand the scope of the originally proposed AD, the FAA has determined that it is necessary to reopen the comment period to provide additional opportunity for public comment.

Cost Impact

There are approximately 508 airplanes of the affected design in the worldwide fleet. The FAA estimates that 244 airplanes of U.S. registry would be affected by this proposed AD, that it would take between 2 and 4 work hours per airplane to do the initial inspection to see if a doubler is installed, and that the average labor rate is $80 per work hour. Based on these figures, the cost impact of the proposed AD on U.S. operators is estimated to be between $39,040 and $78,080, or between $160 and $320 per airplane.

The cost impact figures discussed above are based on assumptions that no operator has yet accomplished any of the proposed requirements of this AD action, and that no operator would accomplish those actions in the future if this AD were not adopted. The cost impact figures discussed in AD rulemaking actions represent only the time necessary to perform the specific actions actually required by the AD. These figures typically do not include incidental costs, such as the time required to gain access and close up, planning time, or time necessitated by other administrative actions.

Authority for This Rulemaking

Title 49 of the United States Code specifies the FAA's authority to issue rules on aviation safety. Subtitle I, Section 106, describes the authority of the FAA Administrator. Subtitle VII, Aviation Programs, describes in more detail the scope of the Agency's authority.

We are issuing this rulemaking under the authority described in Subtitle VII, Part A, Subpart III, Section 44701, ''General requirements.'' Under that section, Congress charges the FAA with promoting safe flight of civil aircraft in air commerce by prescribing regulations for practices, methods, and procedures the Administrator finds necessary for safety in air commerce. This regulation is within the scope of that authority because it addresses an unsafe condition that is likely to exist or develop on products identified in this rulemaking action.

Regulatory Impact

The regulations proposed herein would not have a substantial direct effect on the States, on the relationship between the national Government and the States, or on the distribution of power and responsibilities among the various levels of government. Therefore, it is determined that this proposal would not have federalism implications under Executive Order 13132.

For the reasons discussed above, I certify that this proposed regulation (1) is not a ''significant regulatory action'' under Executive Order 12866; (2) is not a ''significant rule'' under the DOT Regulatory Policies and Procedures (44 FR 11034, February 26, 1979); and (3) if promulgated, will not have a significant economic impact, positive or negative, on a substantial number of small entities under the criteria of the Regulatory Flexibility Act. A copy of the draft regulatory evaluation prepared for this action is contained in the Rules Docket. A copy of it may be obtained by contacting the Rules Docket at the location provided under the caption **ADDRESSES**.

List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Safety.

The Proposed Amendment

Accordingly, pursuant to the authority delegated to me by the Administrator, the Federal Aviation Administration proposes to amend part 39 of the Federal Aviation Regulations (14 CFR part 39) as follows:

PART 39—AIRWORTHINESS DIRECTIVES

1. The authority citation for part 39 continues to read as follows:

Authority: 49 U.S.C. 106(g), 40113, 44701.

§ 39.13 [Amended]

2. Section 39.13 is amended by adding the following new airworthiness directive:

McDonnell Douglas: Docket 2001–NM–183–AD.

Applicability: McDonnell Douglas Model DC–8–55, DC–8F–54, DC–8F–55, DC–8–61, DC–8–62, DC–8–63, DC–8–61F, DC–8–62F, DC–8–63F, DC–8–71, DC–8–72, DC–8–73, DC–8–71F, DC–8–72F, and DC–8–73F airplanes; certificated in any category; as identified in Boeing Alert Service Bulletin DC8–53A080, dated June 22, 2004.

Compliance: Required as indicated, unless accomplished previously.

To detect and correct cracks in the aft fuselage skin at the longeron 28 skin splice, which could lead to loss of structural integrity of the aft fuselage, resulting in rapid decompression of the airplane; accomplish the following:

One-Time Inspection for Previous Repairs

(a) For all airplanes: At the applicable time in paragraph (a)(1) or (a)(2) of this AD, do a general visual inspection to determine if there are previous repairs of the aft fuselage skin panel at the longeron 28 skin splice; in accordance with the Accomplishment Instructions of Boeing Alert Service Bulletin DC8–53A080, dated June 22, 2004. Then do the applicable actions in paragraphs (b) and (c) of this AD.

(1) For airplanes that have accumulated fewer than 24,000 total flight cycles as of the effective date of this AD: Within 24 months after the effective date of this AD or prior to accumulating 24,000 total flight cycles, whichever occurs later.

(2) For airplanes that have accumulated 24,000 total flight cycles or more as of the effective date of this AD: Within 12 months after the effective date of this AD.

Note 1: For the purposes of this AD, a general visual inspection is: ''A visual examination of an interior or exterior area, installation, or assembly to detect obvious damage, failure, or irregularity. This level of inspection is made from within touching distance unless otherwise specified. A mirror may be necessary to ensure visual access to all surfaces in the inspection area. This level of inspection is made under normally available lighting conditions such as daylight, hangar lighting, flashlight, or droplight and may require removal or opening of access panels or doors. Stands, ladders, or platforms may be required to gain proximity to the area being checked.''

Repetitive Inspections for Areas That Do Not Have a Previous Repair

(b) For areas that do not have a previous repair: Before further flight after the initial inspection in paragraph (a) of this AD, do general visual and high-frequency eddy current (HFEC) inspections for discrepancies of the unrepaired areas at longeron 28 between the bolted connection of the tail section to forward of the flat aft pressure bulkhead, on both the left and right sides, and do all applicable related investigative and corrective actions before further flight. Do all actions in accordance with the Accomplishment Instructions of Boeing Alert Service Bulletin DC8–53A080, dated June 22, 2004. Repeat the inspections thereafter at intervals not to exceed 2,000 flight cycles until an optional action in paragraph (d) of this AD is accomplished.

Repetitive Inspections and Repair for Areas That Have a Previous Repair

(c) For areas that have a previous repair: Within 24 months after accomplishing the initial inspection in paragraph (a) of this AD, remove the previous repair(s), and install a local repair, in accordance with Boeing DC–8 Service Rework Drawing SR08530032, dated January 13, 2004, including Boeing Parts List PL SR08530032, dated January 7, 2004, Boeing Advance Engineering Order, Advanced Drawing Change A, dated April 1,

2004, and Boeing Engineering Order, dated January 13, 2004. Do the inspections in paragraph (d) of this AD thereafter at the applicable interval time specified in paragraph (d)(1) or (d)(2) of this AD.

Optional Actions, Extended Repetitive Inspection Intervals

(d) Installing a full-length preventive modification, doing a full-length repair, or doing a local repair, in accordance with Boeing DC–8 Service Rework Drawing SR08530032, dated January 13, 2004, including Boeing Parts List PL SR08530032, dated January 7, 2004, Boeing Advance Engineering Order, Advanced Drawing Change A, dated April 1, 2004, and Boeing Engineering Order, dated January 13, 2004, ends the repetitive inspection intervals in paragraph (b) of this AD; repeat the inspection thereafter at the applicable interval in paragraph (d)(1) or (d)(2) of this AD.

(1) For airplanes that have internal finger doublers: Within 30,000 flight cycles after doing the optional action, do general visual and HFEC inspections for discrepancies of the unrepaired areas at longeron 28 between the bolted connection of the tail section to forward of the flat aft pressure bulkhead, on both the left and right sides, and do all applicable related investigative and corrective actions before further flight. Do all actions in accordance with the Accomplishment Instructions of Boeing Alert Service Bulletin DC8–53A080, dated June 22, 2004. Repeat the inspections thereafter at intervals not to exceed 5,000 flight cycles.

(2) For airplanes that do not have internal finger doublers: Use the applicable intervals and inspections in paragraph (d)(2)(i) or (d)(2)(ii) of this AD.

(i) For repairs (full-length preventive modification, doing a full-length repair, or doing a local repair) that are 12 inches or less along the longeron: Within 15,000 flight cycles after doing the optional action, use only the external general visual inspection method for discrepancies of the unrepaired areas at longeron 28 between the bolted connection of the tail section to forward of the flat aft pressure bulkhead, on both the left and right sides, and do all applicable related investigative and corrective actions before further flight. Do all actions in accordance with the Accomplishment Instructions of Boeing Alert Service Bulletin DC8–53A080, dated June 22, 2004. Repeat the external general visual inspection thereafter at intervals not to exceed 5,000 flight cycles.

(ii) For repairs (full-length preventive modification, doing a full-length repair, or doing a local repair) that are more than 12 inches in length along the longeron: Within 15,000 flight cycles after doing the optional action, use only the low-frequency eddy current (LFEC) inspection method for cracks of the unrepaired areas at longeron 28 between the bolted connection of the tail section to forward of the flat aft pressure bulkhead, on both the left and right sides, and do all applicable related investigative and corrective actions before further flight. Do all actions in accordance with Boeing DC–8 Service Rework Drawing SR08530032, dated January 13, 2004, including Boeing Parts List PL SR08530032, dated January 7, 2004, Boeing Advance Engineering Order, Advanced Drawing Change A, dated April 1, 2004, and Boeing Engineering Order, dated January 13, 2004. Repeat the LFEC inspection thereafter at intervals not to exceed 10,000 flight cycles, using only LFEC inspection outward along all four edges of the doubler.

Reporting of Results

(e) Submit a report of positive findings of the inspections required by paragraph (b) and (d) of this AD to Boeing Commercial Airplanes, Manager, Structure/Payloads, Technical and Fleet Support, Service Engineering/Commercial Aviation Services, Long Beach Division, 3855 Lakewood Boulevard, Long Beach, California 90846, at the applicable time specified in paragraph (e)(1) or (e)(2) of this AD. The report must include the inspection results, a description of any discrepancies found, the airplane fuselage number, and the total number of landings and flight hours on the airplane. Information collection requirements contained in this AD have been approved by the Office of Management and Budget (OMB) under the provisions of the Paperwork Reduction Act of 1980 (44 U.S.C. 3501 *et seq.*) and have been assigned OMB Control Number 2120–0056.

(1) For airplanes on which the inspection is accomplished after the effective date of this AD: Submit the report within 30 days after performing the inspection.

(2) For airplanes on which the inspection was accomplished prior to the effective date of this AD: Submit the report within 30 days after the effective date of this AD.

Alternative Methods of Compliance (AMOCs)

(f)(1) In accordance with 14 CFR 39.19, the Manager, Los Angeles Aircraft Certification Office (ACO), FAA, is authorized to approve AMOCs for this AD.

(2) Before using any AMOC approved in accordance with § 39.19 on any airplane to which the AMOC applies, notify the appropriate principal inspector in the FAA Flight Standards Certificate Holding District Office.

(3) An AMOC that provides an acceptable level of safety may be used for any repair required by this AD, if it is approved by an Authorized Representative for the Boeing Commercial Airplanes Delegation Option Authorization Organization who has been authorized by the Manager, Los Angeles ACO, to make those findings. For a repair method to be approved, the repair must meet the certification basis of the airplane and 14 CFR 25.571, Amendment 45, and the approval must specifically refer to this AD.

Issued in Renton, Washington, on July 18, 2006.

Ali Bahrami,

Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. E6–11805 Filed 7–24–06; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. FAA–2006–25437; Directorate Identifier 2006–NM–136–AD]

RIN 2120–AA64

Airworthiness Directives; BAE Systems (Operations) Limited Model BAe 146 and Avro 146–RJ Airplanes

AGENCY: Federal Aviation Administration (FAA), Department of Transportation (DOT).

ACTION: Notice of proposed rulemaking (NPRM).

SUMMARY: The FAA proposes to adopt a new airworthiness directive (AD) for all BAE Systems (Operations) Limited Model BAe 146 and Avro 146–RJ airplanes. This proposed AD would require modifying the nose landing gear. This proposed AD results from reports of loss of the nose wheel assembly. We are proposing this AD to prevent the nose wheel nut from loosening, and consequently, the nose wheel assembly detaching from the airplane; and to prevent the nose wheel clamping loads from applying to the machined radius at the root of the stub axle, which could result in damage to the nose landing gear.

DATES: We must receive comments on this proposed AD by August 24, 2006.

ADDRESSES: Use one of the following addresses to submit comments on this proposed AD.

- *DOT Docket Web site:* Go to *http://dms.dot.gov* and follow the instructions for sending your comments electronically.
- *Government-wide rulemaking Web site:* Go to *http://www.regulations.gov* and follow the instructions for sending your comments electronically.
- *Mail:* Docket Management Facility, U.S. Department of Transportation, 400 Seventh Street, SW., Nassif Building, room PL–401, Washington, DC 20590.
- *Fax:* (202) 493–2251.
- *Hand Delivery:* Room PL–401 on the plaza level of the Nassif Building, 400 Seventh Street, SW., Washington, DC, between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays.

Contact British Aerospace Regional Aircraft American Support, 13850 Mclearen Road, Herndon, Virginia 20171, for service information identified in this proposed AD.

FOR FURTHER INFORMATION CONTACT: Todd Thompson, Aerospace Engineer, International Branch, ANM–116, FAA, Transport Airplane Directorate, 1601

Lind Avenue, SW., Renton, Washington 98057–3356; telephone (425) 227–1175; fax (425) 227–1149.

SUPPLEMENTARY INFORMATION:

Comments Invited

We invite you to submit any relevant written data, views, or arguments regarding this proposed AD. Send your comments to an address listed in the **ADDRESSES** section. Include the docket number ''FAA–2006–25437; Directorate Identifier 2006–NM–136–AD'' at the beginning of your comments. We specifically invite comments on the overall regulatory, economic, environmental, and energy aspects of the proposed AD. We will consider all comments received by the closing date and may amend the proposed AD in light of those comments.

We will post all comments we receive, without change, to *http://dms.dot.gov*, including any personal information you provide. We will also post a report summarizing each substantive verbal contact with FAA personnel concerning this proposed AD. Using the search function of that Web site, anyone can find and read the comments in any of our dockets, including the name of the individual who sent the comment (or signed the comment on behalf of an association, business, labor union, etc.). You may review the DOT's complete Privacy Act Statement in the **Federal Register** published on April 11, 2000 (65 FR 19477–78), or you may visit *http://dms.dot.gov.*

Examining the Docket

You may examine the AD docket on the Internet at *http://dms.dot.gov*, or in person at the Docket Management Facility office between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays. The Docket Management Facility office (telephone (800) 647–5227) is located on the plaza level of the Nassif Building at the DOT street address stated in the **ADDRESSES** section. Comments will be available in the AD docket shortly after the Docket Management System receives them.

Discussion

The European Aviation Safety Agency (EASA), which is the airworthiness authority for the European Union, notified us that an unsafe condition may exist on all BAE Systems (Operations) Limited Model BAe 146 and Avro 146–RJ airplanes. The EASA advises that there have been reports of loss of the nose wheel assembly on in-service airplanes. Investigation revealed that the nose wheel axle spacers were installed incorrectly, which prevents the wheel attachment nut from being locked onto the axle shaft. This condition, if not corrected, could result in the nose wheel nut loosening, and consequently, the nose wheel assembly detaching from the airplane; or could result in the nose wheel clamping loads applying to the machined radius at the root of the stub axle, which could result in damage to the nose landing gear.

Relevant Service Information

BAE Systems (Operations) Limited has issued Modification Service Bulletin 32–174–70676A, dated February 21, 2006. The modification service bulletin describes procedures for modifying the nose landing gear. The modification involves removing and installing modified nose wheel axle spacers on the nose landing gear. Accomplishing the actions specified in the service information is intended to adequately address the unsafe condition. The EASA mandated the service information and issued airworthiness directive 2006–0137, dated May 23, 2006, to ensure the continued airworthiness of these airplanes in the European Union.

The modification service bulletin refers to Messier-Dowty Service Bulletin 146–32–161, dated March 2, 2005, as an additional source of service information for accomplishing the modification.

FAA's Determination and Requirements of the Proposed AD

These airplane models are manufactured in the United Kingdom and are type certificated for operation in the United States under the provisions of section 21.29 of the Federal Aviation Regulations (14 CFR 21.29) and the applicable bilateral airworthiness agreement. As described in FAA Order 8100.14A, ''Interim Procedures for Working with the European Community on Airworthiness Certification and Continued Airworthiness,'' dated August 12, 2005, the EASA has kept the FAA informed of the situation described above. We have examined the EASA's findings, evaluated all pertinent information, and determined that we need to issue an AD for airplanes of this type design that are certificated for operation in the United States.

Therefore, we are proposing this AD, which would require accomplishing the actions specified in the service information described previously.

Costs of Compliance

This proposed AD would affect about 53 airplanes of U.S. registry. The proposed actions would take about 2 work hours per airplane, at an average labor rate of $80 per work hour. The manufacturer states that it will supply required parts to the operators at no cost. Based on these figures, the estimated cost of the proposed AD for U.S. operators is $8,480, or $160 per airplane.

Authority for This Rulemaking

Title 49 of the United States Code specifies the FAA's authority to issue rules on aviation safety. Subtitle I, Section 106, describes the authority of the FAA Administrator. Subtitle VII, Aviation Programs, describes in more detail the scope of the Agency's authority.

We are issuing this rulemaking under the authority described in Subtitle VII, Part A, Subpart III, Section 44701, ''General requirements.'' Under that section, Congress charges the FAA with promoting safe flight of civil aircraft in air commerce by prescribing regulations for practices, methods, and procedures the Administrator finds necessary for safety in air commerce. This regulation is within the scope of that authority because it addresses an unsafe condition that is likely to exist or develop on products identified in this rulemaking action.

Regulatory Findings

We have determined that this proposed AD would not have federalism implications under Executive Order 13132. This proposed AD would not have a substantial direct effect on the States, on the relationship between the national Government and the States, or on the distribution of power and responsibilities among the various levels of government.

For the reasons discussed above, I certify that the proposed regulation:

1. Is not a ''significant regulatory action'' under Executive Order 12866;

2. Is not a ''significant rule'' under the DOT Regulatory Policies and Procedures (44 FR 11034, February 26, 1979); and

3. Will not have a significant economic impact, positive or negative, on a substantial number of small entities under the criteria of the Regulatory Flexibility Act.

We prepared a regulatory evaluation of the estimated costs to comply with this proposed AD and placed it in the AD docket. See the **ADDRESSES** section for a location to examine the regulatory evaluation.

List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Safety.

The Proposed Amendment

Accordingly, under the authority delegated to me by the Administrator,

the FAA proposes to amend 14 CFR part 39 as follows:

PART 39—AIRWORTHINESS DIRECTIVES

1. The authority citation for part 39 continues to read as follows:

Authority: 49 U.S.C. 106(g), 40113, 44701.

§ 39.13 [Amended]

2. The Federal Aviation Administration (FAA) amends § 39.13 by adding the following new airworthiness directive (AD):

BAE Systems (Operations) Limited (Formerly British Aerospace Regional Aircraft): Docket No. FAA–2006–25437; Directorate Identifier 2006–NM–136–AD.

Comments Due Date

(a) The FAA must receive comments on this AD action by August 24, 2006.

Affected ADs

(b) None.

Applicability

(c) This AD applies to all BAE Systems (Operations) Limited Model BAe 146–100A, –200A, and –300A series airplanes; and Model Avro 146–RJ70A, 146–RJ85A, and 146–RJ100A airplanes; certificated in any category.

Unsafe Condition

(d) This AD results from reports of loss of the nose wheel assembly. We are issuing this AD to prevent the nose wheel nut from loosening, and consequently, the nose wheel assembly detaching from the airplane; and to prevent the nose wheel clamping loads from applying to the machined radius at the root of the stub axle, which could result in damage to the nose landing gear.

Compliance

(e) You are responsible for having the actions required by this AD performed within the compliance times specified, unless the actions have already been done.

Modification

(f) Within 12 months after the effective date of this AD, modify the nose landing gear in accordance with the Accomplishment Instructions of BAE Systems (Operations) Limited Modification Service Bulletin 32–174–70676A, dated February 21, 2006.

Note 1: BAE Systems (Operations) Limited Modification Service Bulletin 32–174–70676A refers to Messier-Dowty Service Bulletin 146–32–161, dated March 2, 2005, as an additional source of service information for accomplishing the modification.

Note 2: BAE Systems (Operations) Limited Modification Service Bulletin 32–174–70676A refers to the abutment ring as a spacer. Airplane Maintenance Manual (AMM) 32–42–17 401 identifies this part as an abutment ring (item 4). Item 3 of the AMM is identified as a spacer but this is not the part described in the modification service bulletin.

No Reporting

(g) Although the service bulletin referenced in this AD specifies to submit certain information to the manufacturer, this AD does not include that requirement.

Alternative Methods of Compliance (AMOCs)

(h)(1) The Manager, International Branch, ANM–116, Transport Airplane Directorate, FAA, has the authority to approve AMOCs for this AD, if requested in accordance with the procedures found in 14 CFR 39.19.

(2) Before using any AMOC approved in accordance with § 39.19 on any airplane to which the AMOC applies, notify the appropriate principal inspector in the FAA Flight Standards Certificate Holding District Office.

Related Information

(i) European Aviation Safety Agency (EASA) airworthiness directive 2006–0137, dated May 23, 2006, also addresses the subject of this AD.

Issued in Renton, Washington, on July 17, 2006.

Ali Bahrami,

Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. E6–11806 Filed 7–24–06; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF COMMERCE

National Telecommunications and Information Administration

47 CFR Chapter III

[Docket Number: 060512129–6129–01]

RIN 0660–AA16

Implementation and Administration of a Coupon Program for Digital-to-Analog Converter Boxes

AGENCY: National Telecommunications and Information Administration, Commerce.

ACTION: Notice of proposed rulemaking and request for comment.

SUMMARY: The National Telecommunications and Information Administration (NTIA) proposes to implement and administer a program to provide $40 coupons to consumers for use towards the purchase of digital-to-analog converter boxes. Congress mandated the coupon program in Title III of the Deficit Reduction Act of 2005. The converter boxes are necessary for consumers who wish to continue receiving broadcast programming over the air using analog-only televisions after February 18, 2009—the date that full-power televisions stations are required to cease analog broadcasting. Without converter boxes, consumers with analog-only television sets will be unable to view full-power television broadcasts unless they purchase digital television sets or subscribe to cable or satellite service.

DATES: Comments must be submitted by 5 p.m. EDT, no later than September 25, 2006.

ADDRESSES: Comments via mail should be submitted to: Milton Brown, Office of the Chief Counsel, National Telecommunications and Information Administration, 1401 Constitution Avenue, Room 4713, Washington, DC 20230. Comments may also be sent by facsimile to (202) 501–8013. Electronic comments may be submitted to *coupon@ntia.doc.gov* or to Regulations.gov at *www.regulations.gov.*

FOR FURTHER INFORMATION CONTACT: Milton Brown at (202) 482–1816.

SUPPLEMENTARY INFORMATION:

I. Background

A. Overview

In this Notice of Proposed Rulemaking (NPRM), NTIA seeks comment on ways to implement the digital-to-analog converter box coupon program pursuant to the Digital Television Transition and Public Safety Act of 2005 (the Act).[1]

The Act, among other things, requires the Federal Communications Commission (FCC) to require full-power television stations to cease analog broadcasting by February 18, 2009. Recognizing that consumers may wish to continue receiving broadcast programming over the air using analog-only televisions not connected to cable or satellite service, the Act authorizes NTIA to create a digital-to-analog converter box assistance program. Specifically, Section 3005 of the Act authorizes the Assistant Secretary for Communications and Information to ''implement and administer a program through which households in the United States may obtain coupons that can be applied toward the purchase of digital-to-analog converter boxes.'' NTIA is proposing these regulations to implement the requirements of the Act.

B. Summary of Relevant Provisions of the Act

Section 3002 of the Act amends the Communications Act of 1934 to direct the FCC to terminate analog television licenses for full power stations and to require all full-power Class A television stations in the digital television service to broadcast in the radio spectrum between 54 and 698 MHz, by February

[1] *See* Title III of the Deficit Reduction Act of 2005, Pub. L. 109–171, 120 Stat. 4, 21 (Feb. 8, 2006).

18, 2009. Section 3003 of the Act directs the FCC to begin an auction of returned analog television spectrum no later than January 28, 2008 and to deposit auction proceeds into a fund established by the Act no later than June 30, 2008. The returned analog television spectrum to be auctioned is the band between 698 and 806 MHz, except for the 24 megahertz that has been reserved for public safety uses and certain other frequencies that have already been made available through auction. Section 3004 of the Act establishes a new Treasury fund to be known as the Digital Television Transition and Public Safety Fund (Fund). It directs the receipts from the FCC's analog spectrum return auction to be deposited into the Fund.

Specific to this NPRM, section 3005 of the Act directs NTIA to implement and administer a program through which eligible U.S. households may obtain a maximum of two coupons of $40 each to be applied towards the purchase of a digital-to-analog converter box. The Act defines the term ''converter box'' to mean a stand-alone device used solely for digital-to-analog conversion.[2] The Act does not define ''eligible household.'' To implement the coupon program, the Act authorizes NTIA to use up to $990 million from the Fund for the program, including $100 million for program administration. NTIA is also authorized to expend up to $1.5 billion for the program, including $160 million for administration, upon a 60-day notice and certification to the Committee on Energy and Commerce of the House of Representatives and the Committee on Commerce, Science, and Transportation of the Senate that the $990 million is insufficient to fulfill coupon requests for eligible U.S. households.[3] This section also authorizes NTIA, beginning on October 1, 2006, to borrow not more than $1.5 billion from the Treasury to implement the program. NTIA, however, must reimburse the Treasury for this amount, without interest, as recovered analog television spectrum auction proceeds are deposited into the Fund.

II. Proposed Rules and Request for Comment

NTIA recognizes that there will be a number of solutions, including market based solutions, to address potential disruption of television service resulting from the analog to digital transition. Many consumers will neither need nor want a coupon to purchase a converter box. For example, many households that are now receiving over-the-air analog television signals will have purchased digital receivers by the time that analog broadcasting ends. We also assume that many households that currently receive over-the-air television transmissions will begin receiving digital service through one of the multichannel video programming distributors, such as cable or satellite service. Therefore, we consider this coupon program to represent one of a number of solutions to accommodate consumers once analog broadcasting ends.

A. Eligible U.S. Households

NTIA proposes that a ''television household'' is a ''household'' with at least one television. A ''household'' consists of all persons who currently occupy a house, apartment, mobile home, group of rooms, or single room that is occupied as separate living quarters and has a separate U.S. postal address.[4] An eligible household address shall not be a post office box.

The Act and its legislative history indicate that the coupon program is not intended to cover every television in every household in the United States. The legislative history provides that the coupon program is intended to help consumers who wish to continue receiving broadcast programming over-the-air using analog only televisions not connected to cable or satellite.[5] The legislative history also notes that as of June 2004, only 14.86 percent of U.S. television households relied exclusively on over-the-air transmission.[6] Furthermore, the Act limits the number of coupons per U.S. household to only two.[7] As a result, NTIA proposes to define those U.S. television households that will be eligible to participate in the coupon program as those households that only receive over-the-air television signals using analog-only television receivers. In other words, households that receive cable or satellite television service would not be eligible even if they have one or more analog-only television receivers not connected to such service.

We invite comment on any other eligibility factors that NTIA should consider. For example, should NTIA consider economic need in the eligibility requirements for coupons? If so, how should ''economic need'' be determined? Should we propose a rule to make coupons available only to households with an income based on a poverty threshold? For example, should we distribute coupons only to those households with an annual income of $19,806 or below—the U.S. Census Bureau's poverty threshold for a family of four?[8] Should we consider some other income level as a basis for eligibility for this program? We note that neither the Committee of Conference's Joint Explanatory Statement (the Manager's report) includes such a requirement regarding economic need or other factors that might be related to a household's eligibility to receive coupons.

Depending on the demand for the coupons, it is possible that the number of requests for coupons may exceed the total dollar amount provided by the Act. If the number of requests exceeds $990,000,000 as specified in the Act, NTIA is authorized to request additional funds from the appropriate Congressional committees, as required by the Act.[9] Recognizing that the additional funding, which cannot exceed $1,500,000,000, may still be insufficient to administer the program, NTIA proposes to fulfill valid coupon requests on a first-come, first-served basis until funds devoted to this program have been spent. Are there other factors NTIA should consider in distributing coupons if the number of requests exceeds the number of coupons available? On the other hand, if the demand for coupons is low, should NTIA consider expanding its eligibility requirements?

B. Coupon Value and Use Restrictions

The Act states that the value of each coupon shall be $40.[10] We recognize that the cost of a converter box may be greater than $40. NTIA proposes to issue $40 coupons that can be redeemed only

[2] Section 3005(d) provides that the term ''digital-to-analog converter box'' means ''a stand-alone device that does not contain features or functions except those necessary to enable a consumer to convert any channel broadcast in the digital television service into a format that the consumer can display on television receivers designed to receive and display signals only in the analog television service, but may also include a remote control device.'' 120 Stat. at 24.

[3] *See supra* note 1 at Section 3005(c)(3).

[4] This definition is based on the definitions of ''household'' and ''housing unit'' used by the U.S. Census Bureau. *See* U.S. Census Bureau, *http//www.census.gov* (Current Population Survey—Definitions and Explanations); *see also* ''Digital Broadcast Television Transition: Several Challenges Could Arise in Administering a Subsidy Program for DTV Equipment,'' GAO–05–623T (May 26, 2005) (GAO Challenges Report) at 10 (discussion on eligibility criteria for low-income households).

[5] H.R. REP. NO. 109–362, at 201 (2005) (Conf. Rep.).

[6] *Id.*

[7] *See* Section 3005(c)(1)(A) of the Act, 120 Stat. at 23 (titled ''Two-per-household maximum'' provides that ''[t]he Assistant Secretary shall ensure that each requesting household receives, via the United States Postal Service, no more than two coupons'').

[8] *See* U.S. Census Bureau's Poverty Thresholds for 2005, *http://www.census.gov/hhes/www/poverty/threshld/thresh05.html.*

[9] *See supra* note 3.

[10] Sec. 3005(c)(4), 120 Stat. at 24.

at a certified retailer when purchasing an eligible converter box. To keep track of the number of coupons issued, used and redeemed, as well as to minimize fraud and counterfeiting, NTIA intends to place identifying serial numbers on the coupons. NTIA invites comment on this proposal and other fraud prevention methods that are available or are currently being used. For example, instead of a paper coupon, should NTIA consider using an electronic coupon card?

The Act also states that the ''[t]wo coupons may *not* be used in combination, toward the purchase of a single digital-to-analog converter box.'' [11] As a result, NTIA proposes that each individual coupon be restricted for the purchase of one digital-to-analog converter box and that a coupon holder cannot use two coupons in combination toward the purchase of a single digital-to-analog converter box. To prevent fraud, NTIA proposes to prohibit a coupon holder from returning a converter box to a retailer for a cash refund or for credit towards the purchase of another item. NTIA proposes to permit the even exchange for another certified converter box in the event of defective or malfunctioning equipment. NTIA also proposes similar restrictions on participating retailers elsewhere in the rules. NTIA invites comment on these proposed rules.

C. Application Process

The Act states that a household may obtain coupons by making a request between January 1, 2008 and March 31, 2009.[12] NTIA proposes to require consumers to request coupons by submitting an application in accordance with the eligibility criteria and procedures provided in this proposed rule. As part of the application process, NTIA proposes to require applicants to submit the following: (1) Name; (2) address; (3) the number of coupons that they require; (4) a certification that they only receive over-the-air television signals using an analog-only (NTSC) television receiver; and (5) a certification that no other member of the household has or will apply for a coupon. NTIA proposes to commence the application period on January 1, 2008 and conclude on March 31, 2009.

The Act limits coupon distribution to two coupons per household and requires the Assistant Secretary of Communications and Information to ensure that the requesting households receive the coupons via the United States Postal Service.[13] As stated above, NTIA proposes a rule through which an eligible U.S. television household that requests coupons must certify that it only receives over-the-air television signals using an analog-only (NTSC) television receiver, and that they receive only over-the-air transmissions in analog format, and that they do not receive service from a multichannel video program distributor such as a cable or satellite service. As part of the certification process, the applicant household must request the specific number of coupons that it requires, not to exceed two. An applicant household requesting more than one coupon must certify that it has more than one analog-only (NTSC) television receiver. If an applicant fails to specify the number of coupons that they require, that applicant will only receive one coupon. Once certified, the requested coupon(s) will be sent via the United States mail. Regardless of the manner or the type information being collected as part of the application process, NTIA intends to protect all such information consistent with applicable law including, but not limited to, the Privacy Act of 1974.[14]

NTIA intends to make application forms widely available. NTIA intends to allow potential applicants to request forms through the mail, via telephone, and over the Internet. NTIA places the highest priority on designing an application system that prevents waste, fraud, and abuse. As such, NTIA intends to utilize a computer based application system which prevents duplicate requests for coupons and other potential abuses of the program by households. NTIA seeks comment on ways to prevent waste, fraud, and abuse in the application process.

The legislative history of the Act expresses an expectation that NTIA will use electronic media and networks to make aspects of the program more efficient.[15] To that end, NTIA proposes to permit consumers to request, submit and track applications over the Internet. We invite comment on our proposal to permit consumers to submit electronic applications.

D. Coupon Expiration

The Act states that all coupons will expire three months after issuance. NTIA proposes to print an expiration date on each coupon. NTIA also proposes that the expiration date will be three months after the coupon's issuance date, which would be the date upon which the coupon is placed in the U.S. mail. Consumers will not be able to redeem a coupon to purchase a converter box after the expiration date printed on a coupon and retailers will not be able to accept coupons for converter box purchases after their expiration date. NTIA believes that an expiration date will encourage consumers to obtain the necessary converter boxes in a timely manner. Moreover, a specified expiration date will reduce opportunities for waste, fraud, and abuse and provide greater efficiency and certainty in administering the program. We seek comment on this proposed rule and also on whether other options for addressing the expiration requirement are available. For example, should NTIA define the issuance date to be the date upon which a consumer receives a coupon? If so, how would NTIA calculate the expiration date of a coupon? Or should NTIA assume that the average delivery of a first class letter is two to three days and thus define the issuance date to be three days after the coupon is placed in the U.S. mail?

E. Digital-to-Analog Converter Box

The Act defines the term ''digital-to-analog converter box'' (converter box) as ''a stand-alone device that does not contain features or functions except those necessary to enable a consumer to convert any channel broadcast in the digital television service into a format that the consumer can display on television receivers designed to receive and display signals only in the analog television service, but may also include a remote control device.'' It is our understanding that a converter box as defined by the Act is currently not commercially available, at least on a widespread basis. Ideally, a converter box should be able to receive digital broadcast signals in the same receiving configuration (*e.g.*, same household antenna, same location) as used for the existing analog reception. We note, however, recent GAO congressional testimony indicating that antenna reception of digital signals may vary based on a household's geography and other factors.[16]

For purposes of the coupon program, NTIA proposes certain standards for a minimum-capabilities converter box that simply converts an Advanced Television Systems Committee (ATSC) terrestrial digital broadcasting signal to the analog National Television Standards Committee (NTSC) format. The digital converter box should be able to receive, render and display usable pictures and sound from high definition

[11] *See* Sec. 3005(c)(1)(B) of the Act, 120 Stat. at 23 (emphasis added).

[12] *See id.* at Sec. 3005(c)(1)(A).

[13] *See supra,* note 5.

[14] 5 U.S.C. 552a.

[15] H.R. Rep. 109–362 at 202 (2005 (Conf. Rep.)).

[16] *See* GAO Challenges Report *supra,* note 7.

as well as standard definition broadcast; however, the converter box would not be required to render pictures and sound at more than standard definition quality. Specifically, the converter box should be capable of receiving, decoding and presenting video and audio from digital television transmissions as specified in FCC Part 73 and ATSC Standards A/52A, A/53C, and A/65B.[17] NTIA proposes to take into consideration the cost (*i.e.,* inexpensive but meets the ATSC Recommended Practice: Receiver Performance Guidelines standard (A/74) of the converter box as well as the ease of installation and operation. Specifically, NTIA proposes the following characteristics in certifying a converter box:

(a) Appropriately processes all ATSC radio frequency (RF) signals provided to the antenna-only input and then provides output signals in standard definition video for display on an NTSC television receiver/monitor;

(b) Delivers NTSC composite video and stereo audio to drive NTSC monitors;

(c) Delivers Channel 3 or 4 switchable (NTSC) RF output for television receivers;

(d) Complies with FCC requirements for Closed Captioned, Emergency Alert System (EAS) and the required parental controls;

(e) Operable by and includes a remote control; and

(f) Tunes to all television channels 2–69.

NTIA proposes to accept certification for converter boxes that are capable of only receiving over-the-air broadcast signals for display over analog-only (NTSC) receivers/monitors to firmly control the nature of the input and output signals and connectors on the box. The only input of the converter box shall be for an external antenna. The outputs shall be channel 3 or 4 (NTSC modulated signals), composite video (NTSC baseband), and audio (stereo). The single input (Type F connector) ensures that only an antenna can be connected to eligible boxes thus ensuring use of such boxes as for over-the-air television reception only. The channel 3 or 4 analog output (Type F connector) ensures that older style NTSC analog television receivers can be connected to eligible boxes. The composite video and stereo audio (all three RCA connectors) ensures that other NTSC analog television monitors can also connect to the boxes. We seek comment on these characteristics that we propose to use to certify converter boxes and on other characteristics we should consider as well.

NTIA proposes to require manufacturers to self-certify that the converter boxes meet the standards outlined in the rules. NTIA reserves the right to test the converter boxes that have been self-certified by the manufacturer to ensure that they meet those standards. We also invite comment on whether there are existing industry or government organizations engaged in activities that can help speed the development of testing/certification processes within the allowed time frame of this program?

For purposes of this program, we interpret the Act's definition to mean that a digital-to-analog converter box is not a digital cable television box. Therefore, we do not propose to accept self-certifications for a digital cable television box. We also do not intend to accept certifications for converter boxes that have features beyond those necessary to convert an ATSC digital signal to an analog NTSC format. We invite comment on the appropriate minimum technical capabilities for converter boxes. We also seek comment on the extent we should consider certain standards, such as energy standards, in determining the type of converter box that would be eligible for this program.[18] How would these standards affect this program?

Finally, NTIA is seeking comments on how the converter boxes eligible for participation in the coupon program should be identified for the consumer. Should NTIA print a list of approved converter boxes on the coupons or on information sent with the coupons? Should NTIA maintain an Internet Web site listing approved converter boxes? Should it be left to the retailer to inform consumers which converter boxes are eligible for the coupon through the retailers advertising or at placards at point of sale?

F. Retailer Certification

Participation by retailers in this program is voluntary. Retailers that choose to participate will not be compensated by NTIA. We propose to permit consumers to redeem coupons at retailers that have established production and distribution channels and who have demonstrated that they can redeem coupons expeditiously and efficiently. We note that retailers are also typically familiar with coupon programs and have systems in place to process coupons. We are also interested in retailers that can handle converter box purchases with the coupons via mail, phone or the Internet-based sales.

We propose to institute a process for retailers through which they must certify, under penalty of law, that they: (1) Provide information to customers about the necessity for and the installation of a converter box; (2) have in place systems that can be easily audited as well as systems that have the ability to prevent fraud and abuse in the coupon program; (3) are willing to be audited at any time during the course of the coupon program; (4) have the ability to electronically provide NTIA with sales information related to coupons used in the purchase of converter boxes, specifically tracking each serialized coupon by number with a corresponding certified converter box purchase; and (5) will only submit coupons for redemption as a result of purchases made for converter boxes certified by NTIA.

NTIA also proposes to require retailers to adhere to and enforce coupon restrictions contained in the Act such as prohibiting coupon holders from using two coupons in combination towards the purchase of a single digital-to-analog converter box. We will require retailers to prohibit consumers from using coupons to purchase any device other than a converter box certified pursuant to this rulemaking. Moreover, we expect retailers to have in place a system that prevents consumers from returning a converter box to the retailer for a cash refund or for credit towards the purchase of another item. In other words, a coupon holder is limited to an even exchange of one certified converter box for another. NTIA proposes to require retailers to submit coupons or coupon information to NTIA for redemption within 30 days after the coupon has been used to purchase a converter box. NTIA also proposes to require retailers to retain hard copies of sales information related to converter boxes purchased with coupons for one year. We seek comment on ways to prevent waste, fraud and abuse in the process by which retailers accept and process coupons.

As part of the certification process, NTIA intends to inform retailers of the coupon program's details and their rights and obligations, including their obligations to honor all valid coupons that are tendered in the authorized manner. NTIA proposes to reimburse retailers within 60 days after receiving sales information related to converter boxes purchased with coupons. NTIA also proposes to review and resolve any

[17] *See* 47 CFR 73.682(d); ATSC Standards A/52A, *Digital Audio Compression (AC–3),* A/53C, *Digital Television Standard,* and A/65A, *Program and System Information Protocol for Terrestrial Broadcast and Cable.*

[18] *See e.g.,* Cal. Code Regs, tit. 20, section 1605 (2004).

allegation by the retailer that it was improperly denied reimbursement for a valid coupon properly tendered and accepted pursuant to the rules. We request comment on our proposed rule with respect to the self-certification process and other rights and responsibilities identified for retailers. NTIA places the highest priority on creating a coupon redemption process that prevents waste, fraud and abuse, while minimizing the burden on participating retailers and consumers. Therefore, we also seek comment on the various ways to prevent waste, fraud and abuse in the coupon redemption process.

G. Consumer Education

In addition to the proposed rules above, we also solicit comment on other issues related to the coupon program that are not a part of the rulemaking process. For example, we solicit views on the most effective means to provide consumer education about this program. The Act provides that NTIA may spend ''not more than $5,000,000 for consumer education concerning the digital transition and the availability of the digital-to-analog converter box program.'' Considering the costs of media production and paid advertising time, the $5,000,000 limit necessitates that NTIA carefully leverage the program's consumer education spending by collaborating with and complementing the consumer education efforts of broadcasters, equipment manufacturers, retailers, consumer groups and others with a stake in a successful and timely transition to digital television broadcasting. According to the FCC Web site, a wide range of broadcasters, equipment manufacturers, retailers, consumer groups and others have begun to produce and provide information concerning the digital transition.[19]

In order to maximize consumer education efforts, NTIA may seek proposals to produce commonly used on-air announcements, print and online promotional materials as well as other media or services that can be used to convey clear, consistent, frequent and widely disseminated information concerning the existence of the digital-to-analog converter box program and the actions that households must take to obtain coupons and converters. Examples include advertising campaigns, public service announcements, print articles, web sites, and posters for public display. Any public information campaign undertaken by NTIA will only be successful if other stakeholders in the digital-to-analog converter box program contribute significant effort to the production and distribution of this information.

We seek comment on ways to provide consumer information to those households most likely to rely solely on over-the-air broadcasts in analog format. We note that there are differences in the estimated number of households that rely exclusively on over-the-air broadcasts. For example, as noted above, the legislative history indicates that 14.86 percent of U.S. households rely exclusively on over-the-air transmissions, whereas the Government Accountability Office (GAO) provided an estimate of 19 percent or 21 million American households.[20] We note also that in recent congressional testimony GAO stated that the identification of households that rely exclusively on over-the-air television is difficult because no list of such households exists.[21] GAO also noted that information on the inverse—those households that subscribe to cable or satellite service—is dispersed across hundreds of providers, and these providers may face limitations on the release of their lists to others. Thus, any information as to ways to target consumer outreach to those households eligible for coupons under this program would be helpful. The Managers' Report provides that NTIA may use the efficiencies of electronic media and networks for outreach efforts. We solicit comment on the best ways to utilize the Internet and other forms of electronic media to disseminate consumer information on the various aspects of the program. Again, we seek information regarding ways primarily to target those specific households that only receive over-the-air television broadcast signals.

III. Submission of Comments

NTIA requests written comments from interested parties on the proposed rule as stated above as well any other aspects of the Act related to the digital-to-analog converter box program. NTIA is especially interested in receiving written comments from persons with particular knowledge of the legal, economic and technical elements related to such a program. Any information submitted to NTIA, however, should not contain confidential, proprietary or business sensitive data.

Executive Order 12866

This proposed rule has been determined to be economically significant for purposes of Executive Order 12866; and therefore, has been reviewed by the Office of Management and Budget (OMB). In accordance with Executive Order 12866, an Economic Analysis was completed, outlining the costs and benefits of implementing this program. The complete analysis is available from NTIA upon request.

Executive Order 12988

This rule has been reviewed under Executive Order 12988, Civil Justice Reform. NTIA has determined that the rule meets the applicable standards provided in section 3 of the Executive Order, to minimize litigation, eliminate ambiguity, and reduce burden.

Congressional Review Act

This rule has been determined to be major under the Congressional Review Act, 5 U.S.C. 801 *et seq*.

Regulatory Flexibility Act

As required by the Regulatory Flexibility Act, 5 U.S.C. 603, NTIA has prepared an Initial Regulatory Flexibility Analysis (IRFA) of the possible significant economic impact on small entities of the policies and rules addressed in this Notice. The IRFA is set forth in Appendix A. Written public comments are requested on the IRFA. These comments must be filed in accordance with the same filing deadlines a comments filed in response to this Notice and must have a separate and distinct heading designating them as responses to the IRFA.

Information Collection and Recordkeeping Requirement

This document contains proposed information collection requirements. In accordance with the Paperwork Reduction Act of 1995 (44 U.S.C. chapter 35), NTIA invites comments on this information collection for which NTIA intends to request approval from the Office of Management and Budget (OMB). To successfully administer this program, NTIA requests approval on three collection requirements and recordkeeping and reporting requirements for: (1) The application that households must submit to receive coupons; (2) the certification form for retailers that will sell the converter boxes and submit coupons for redemption; and (3) the certification form and recordkeeping and reporting requirements for manufacturers

[19] The Federal Communications Commission maintains a consumer education website on the digital television transition at *http://www.dtv.gov*.

[20] *See* ''Digital Broadcast Television Transition: Estimated Cost of Supporting Set-Top Boxes to Help Advance the DTV Transition,'' GAO–05–258T (February 17, 2005).

[21] *See* GAO Challenges Report, *supra* note 7.

regarding converter boxes eligible for the coupon program.

Comments on the information collection and recordkeeping requirements in this proposed rule must be received by September 25, 2006.

Comments are invited on (a) Whether the collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility; (b) the accuracy of the agency's estimate of burden including the validity of the methodology and assumptions used; (c) ways to enhance the quality, utility and clarity of the information collected; and (d) ways to minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology.

Comments on the information collection and recordkeeping requirements in this proposed rule may be sent to Milton Brown, Office of the Chief Counsel, National Telecommunications and Information Administration, 1401 Constitution Avenue, Room 4713, Washington, DC 20230.

(1) *Title:* Application for the Digital-to-Analog Converter Box Coupon.

Type of Request: New Collection.

Estimate of Burden: Public reporting burden for this collection of information is estimated to average .25 hours (15 minutes) per respondent.

Respondents: U.S. television households that receive only over-the-air television in analog format.

Estimated Number of Respondents: 21 million U.S. television households.

Estimated Number of Responses per Respondent: 1.

Estimated Total Annual Burden on Respondents: .5 hours.

(2) *Title:* Certification for Retailer to Accept and Redeem Coupons for the purchase of a Digital-to-Analog Converter Box Coupon.

Type of Request: New Collection.

Estimate of Burden: Public reporting burden for this collection of information is estimated to average 1.0 hour per respondent.

Respondents: Retailers that accept coupons for digital-to-analog converter boxes and submit them to NTIA for redemption.

Estimated Number of Respondents: 100.

Estimated Number of Responses per Respondent: 1.

Estimated Total Annual Burden on Respondents: 1 hour.

(3) *Title:* Certification of Digital to Analog Converter Box.

Type of Request: New Collection.

Estimate of Burden: Public reporting burden for this collection is estimated at 1 hour per respondent.

Respondents: Companies that manufacture digital-to-analog converter boxes who request NTIA certification.

Estimated Number of Respondents: 20.

Estimated Number of Responses per Respondent: 1.

Estimated Total Annual Burden on Respondents: 1 hour.

All responses to this information collection and recordkeeping notice will be summarized and included in the request for OMB approval. All comments will also become a matter of public record.

Executive Order 12372

No intergovernmental consultation with State and local officials is required because this rule is not subject to the provisions of Executive Order 12372, Intergovernmental Consultation.

Unfunded Mandates

This rule contains no federal mandates (under the regulatory provision of Title II of the Unfunded Mandates Reform Act of 1995) for State, local, and tribal governments or the private sector. Thus, this rule is not subject to the requirements of sections 202 and 205 of the Unfunded Mandates Reform Act of 1995.

National Environmental Policy Act

It has been determined that this rule does not constitute a major federal action significantly affecting the quality of the human environment, and in accordance with the National Environmental Policy Act of 1969 [42 U.S.C. 4321 *et seq.*] (NEPA), an Environmental Impact Statement is not required.

Government Paperwork Elimination Act

NTIA is committed to compliance with the Government Paperwork Elimination Act, which requires Government agencies to provide the public the option of submitting information or transacting business electronically to the maximum extent possible.

Executive Order 12630

This rule does not contain policies that have takings implications.

Executive Order 13132

This rule does not contain policies having federalism implications requiring preparation of a Federalism Summary Impact Statement.

Authority: Title III of the Deficit Reduction Act of 2005, Pub. L. 109–171, 120 Stat 4, 21 (Feb. 8, 2006).

Dated: July 18, 2006.

John M. R. Kneuer,

Acting Assistant Secretary for Communications and Information.

Appendix A—Initial Regulatory Flexibility Analysis

As required by the Regulatory Flexibility Act (RFA) of 1989, as amended, NTIA has prepared an Initial Regulatory Flexibility Analysis (IRFA) addressing the economic impact on small entities that might result from this Notice of Proposed Rulemaking (''Notice'' or ''proposed rule'').[1] NTIA requests written public comments on this IRFA. Comments must be identified as responses to the IRFA and must be filed by the deadlines for comments on the Notice provided above. We will consider all timely comments in drafting our final Regulatory Flexibility Analysis and in making our decision on a final rule. NTIA will send a copy of the Notice, including this IRFA, to the Chief Counsel for Advocacy of the Small Business Administration.

This analysis addresses six issues: (1) A description of the reasons why action by NTIA is being considered; (2) the proposed rule's objectives and legal basis; (3) a description of and, where feasible, an estimate of the number and types of small entities affected by the proposed rule; (4) a description of the projected reporting, recordkeeping and other compliance requirements of the proposed rule, including an estimate of the classes of small entities which will be subject to the requirement; and (5) the relevant rules that could duplicate, overlap, or conflict with the proposed rule. The following sections provide details on each of these issues.

A. Need for, Objectives of, the Proposed Rule

NTIA is promulgating this proposed rule because of a statutory mandate to create a subsidy program that will affect the public under section 3005 of Public Law 109–171.[2] This legislation, known as The Digital Television Transition and Public Safety Act of 2005 (the Act), requires the Federal Communications Commission (FCC) to require full-power television stations to cease analog broadcasting by February 18, 2009. After that date, households using analog-only televisions not connected to cable or satellite service will no longer be able to receive television broadcast unless the television is connected to a converter box that converts the digital signal to analog format. As a result, the Act authorizes NTIA to create a program whereby certain households can apply for $40 coupons to be used towards the purchase of digital-to-analog converter boxes.

The proposed rule sets forth a framework to implement the coupon program as authorized by the Act. Moreover, the proposed rule provides public notice as well as an opportunity for the public to comment.

[1] *See* 5 U.S.C. 603(a).

[2] *See* Title III of the Deficit Reduction Act of 2005, Pub. L. 109–171, 120 Stat. 4, 21 (Feb. 8, 2006).

The proposed rule provides clear guidelines to consumers, manufacturers and retailers regarding eligibility, responsibilities and certifications.

B. Legal Basis

The legal basis for any action taken pursuant to this proposed rule is contained in the Act. Specifically, section 3005 of the Act directs NTIA to implement and administer a program through which eligible U.S. households may obtain a maximum of two coupons, $40 each, to be applied towards the purchase of a digital-to-analog converter box. The Act defines the term ''converter box'' to mean a stand-alone device used solely for digital-to-analog conversion.[3] The Act does not define ''eligible household.'' To implement the coupon program, the Act authorizes NTIA to use up to $990 million from the Fund for the program, including $100 million for program administration. NTIA is also authorized to expend up to $1.5 billion for the program, including $160 million for administration, upon a 60-day notice and certification to the Committee on Energy and Commerce of the House of Representatives and the Committee on Commerce, Science, and Transportation of the Senate that the $990 million is insufficient to fulfill coupon requests for eligible U.S. households.[4] This section also authorizes NTIA, beginning on October 1, 2006, to borrow not more than $1.5 billion from the Treasury to implement the program. NTIA, however, must reimburse the Treasury for this amount, without interest, as recovered analog television spectrum auction proceeds are deposited into a new Treasury fund to be known as the Digital Television Transition and Public Safety Fund.

C. Description and Estimate of the Number of Small Entities to Which the Proposed Rules May Apply

The RFA directs agencies to provide a description of and, where feasible, an estimate of the number of small entities that may be affected by the proposed rules.[5] The RFA generally defines the term ''small entity'' to include ''small business,'' ''small organization,'' or ''small governmental jurisdiction.''[6] The Small Business Administration defines small entities in the ''radio, television, and other electronic stores'' sector as those organizations with less than $8 million in annual revenue.[7] With respect to equipment manufacturers, the SBA defines those small entities as those with less than 750 employees.

NTIA does not have precise information on the number of qualifying small businesses that are in the manufacturing or electronic retailing sectors that would be affected by the proposed rule. According to data from the U.S. Census Bureau, there were 1041 U.S. companies in 2002 that manufactured radio and television communications equipment, and approximately 1010 of these firms were classified as small entities having fewer than 750 employees.[8] Specific figures for the number of firms that manufacture television equipment are unavailable; however, NTIA believes that some of these companies are capable of manufacturing a digital-to-analog converter box and qualify as small entities. To the extent that there exists small entities capable of manufacturing a converter box pursuant to the standards provided in the proposed rule, the extent to which they participate in the coupon program will be a business decision and not based on any mandatory action resulting from the proposed rule. Thus we are unable to predict with any certainty as to the number of small firms that will view the coupon program as a business opportunity and thus be affected by the proposed rule. We anticipate that comments to the proposed rule and to this IRFA will be informative on this subject.

Likewise, it is difficult to ascertain the number of consumer electronics retailers that qualify as small entities. Certain data from trade associations, however, provide a glimpse of the type of small businesses that may participate in the coupon program. For example, the Professional Audio-Video Retailers Association (PARA) division of the Consumer Electronics Association (CEA) has more than 250 professional audio, video, home theater, and custom electronics specialty dealers.[9] CEA has also formed a partnership with the North America Retail Dealers Association (NARDA), a group of independent retailers that include consumer electronics retailers that represent approximately 3,500 storefronts and accounts for over $11 billion in annual sales.[10] However, not all NARDA members may be interested in participating in the digital-to-analog converter box coupon program. In addition to consumer electronics, NARDA's members also sell and service kitchen and laundry appliances, consumer mobile electronics, computers and other home and small office products, furniture, sewing machines, vacuum cleaners, room air conditioners, and other consumer home products. NARDA's members, however, are not limited to retailers, but also include manufacturers, suppliers and vendors. Moreover, both PARA and NARDA members may be specialty electronic dealers not interested in selling converter boxes.

D. Description of Projected Reporting, Recordkeeping and Other Compliance Requirements

The proposed rules place certain compliance requirements on manufacturers and retailers that choose to participate in the program. For example, the proposed rule requires retailers to certify under law that they: (1) Will educate their customers on the necessity for and the installation of a converter box; (2) have systems in place that can be easily audited as well as systems that have the ability to prevent fraud and abuse in the coupon program; (3) are willing to be audited at any time during the course of the coupon program; (4) have the ability to electronically provide NTIA with sales information related to coupons used in the purchase of converter boxes, specifically tracking each serialized coupon by number with a corresponding certified converter box purchase; and (5) will only submit coupons for redemption as a result of purchases made for converter boxes certified by NTIA. The Notice also requires retailers to submit coupons for redemption within 30 days after they have been used for a purchase, and to retain hard copies of sales information for one year after the purchase.

With respect to manufacturers, the proposed rule provides standards that will be required for converter boxes for the coupon program. These standards are necessary to comply with the Act and to ensure that converter boxes function properly. Manufacturers will be required to submit a self certification that affirms that these standards have been met.

E. Steps Taken To Minimize Significant Economic Impact on Small Entities, and Significant Alternatives Considered

The proposed rule has minimal economic impact on small entities. Participation in the coupon program on all levels—consumers, manufacturers, and retailers—is voluntary. Thus any significant economic impact would not be caused by the proposed rule that creates and implements the coupon program, as small entities are not required by the rules to participate in the program. However, if a small entity does participate in the program, there is no indication that they will incur significant economic impacts. Moreover, there does not appear to be any economic impact on small businesses by a decision not to participate in the program.

Associated Costs

Although there may be costs associated with accepting the coupons and distributing the converter boxes, the coupon program does not restrict the retailer in pricing the converter box. Manufacturers and retailers may consider these associated costs and establish the wholesale and retail price of the converter boxes to recoup any associated costs. In fact, the coupon program anticipates that there will be a co-pay element to the purchase price. Thus, to the extent that a small retailer or manufacturer incurs costs as a result of this program, those costs can be recouped though the retail or wholesale price which the retailer and manufacturer are at liberty to choose.

Section D of this IRFA provides the compliance requirements of the proposed

[3] Section 3005(d) provides that the term ''digital-to-analog converter box'' means ''a stand-alone device that does not contain features or functions except those necessary to enable a consumer to convert any channel broadcast in the digital television service into a format that the consumer can display on television receivers designed to receive and display signals only in the analog television service, but may also include a remote control device.'' 120 Stat. at 24.

[4] *See supra* note 2 at Section 3005(c)(3).

[5] 5 U.S.C. 603(b)(3), 604(a)(3).

[6] 5 U.S.C. 601(6).

[7] *See* U.S. Small Business Administration Table of Small Business Size Standards Matched to North American Industry Classification System Codes, *http://www.sba.gov/size.*

[8] *See* U.S. Census Bureau, 2002 Economic Census, Industry Statistics by Employment Size, Radio and Television Broadcasting and Wireless Communications Equipment Manufacturing (NAICS Code 334220), Table 4, available at *http://www.census.gov/econ/census02.*

[9] *See http://www.ce.org/Membership/Divisions/98.asp.*

[10] *See http://www.narda.com.*

rule that retailers must assume if they decide to participate in the coupon program. Besides the time that it takes to submit a certification form to NTIA, there will be actual costs associated with meeting these compliance requirements. These costs, however, are difficult to quantify because of many varying factors. However, we anticipate that the costs would be minimal because retailers and manufacturers may already have the ability to meet the requirements associated with participation in this program. For example, retailers would have to ensure that employees are capable of educating customers about the necessity for and installation of converter boxes. The costs for this compliance would be calculated by the number of hours it would take to train employees. The estimate would depend on a number of factors such as the existing sales force's expertise, number of employees, salary levels, type of converter box that is certified, and the consumer knowledge.

The proposed rule also requires retailers to have systems in place that can be easily audited as well as systems that have the ability to prevent fraud and abuse in the coupon program. We assume that most businesses would have systems in place that can be easily audited, and therefore, we do not anticipate that small businesses will have to assume a cost to purchase a new system for the coupon program. Retailers must also have systems in place that have the ability to prevent fraud and abuse in the coupon program. We assume that most retailers are familiar with and accept coupons for merchandise, and that they have in place systems to prevent fraud. The nature of this coupon program, however, may require participating retailers to assume additional costs associated with preventing fraud. These costs cannot be estimated at this point in the rulemaking process. There may be costs associated in complying with an audit. These costs would most likely be calculated in terms of employee hourly rates. The associated costs depends on the nature and extent of an audit.

There are also costs associated with handling coupons, that is, accepting the coupons, submitting the coupons for redemption, and retaining hard copies of the coupons pursuant to the regulations. Again, these associated costs depend on a number of factors such as the particular systems that retailers currently have in place, as well as the extent to which these costs can be absorbed within existing procedures that the retailer has in place.

Likewise there are costs associated with small manufacturers complying with the proposed rule. Manufacturers must ensure that the converter box meet the standards outlined in the final rule. Manufacturers would also have to assume up front costs of manufacturing and distributing the boxes to certified retail outlets. These costs are dependent upon a number of factors such as the cost to the manufacturer to build the converter box pursuant to regulations, the manufacturer's established distribution lines, the number of retailers participating, and any relationship that may or may not exist between the manufacturer and the retailer.

Exemptions and Waivers

The proposed rule does not provide a small business exemption for any compliance requirements. To the extent possible, the proposed rule limits reporting and recordkeeping requirements to only those necessary to provide the coupons in accordance with the Act. Any exemption or waiver of the requirements imposed on manufacturers or retailers would potentially subject the program to waste, fraud and abuse.

It is not essential that small businesses obtain a waiver of the certification requirement outlined in the section above. It is important for small retail businesses participating in the program to be knowledgeable on the particular converter boxes certified by the program, and for their sales staff to be able to provide direction and guidance for consumers. Moreover, these retailers would have to utilize systems that accommodate the government issued coupons. In the long run, the certification program may provide some protection from consumer liability for small businesses that provide converter boxes consistent with the government-established certification requirement. As such, a small business could assure customers that the converter box meets government standards, which may offset returns and other issues that could cause additional costs for the business.

The requirement for retailers to submit coupons for redemption within 30 days after they have been used for purchase, and the requirement to retain hard copies of sales information for one year after the purchase also should not be waived for small businesses. These redemption and record-keeping requirements are necessary to keep track of the number of coupons used and to ensure that the program can be properly audited at any time. The ability of the agency to monitor the program and to audit the program outweighs any burden on small businesses to comply with these requirements. Again, any costs imposed on small businesses to comply with these requirements can be recouped through the retail price of the converter box.

Likewise, compliance requirements cannot be waived for small businesses that manufacturer converter boxes. The standards outlined in the proposed rule are necessary to comply with the Act and to ensure that the converter boxes certified by the program function properly.

Regarding alternatives considered, the proposed rule requests comment on whether a paper coupon or an electronic coupon card should be used. If an electronic coupon card is used, small businesses may not be able to participate in the coupon program if they do not have a system in place that accepts coupons electronically. On the other hand, paper coupons may present an additional burden on small businesses in processing the sale and submitting the hard copy for redemption. Either of these alternatives will only affect small businesses to the extent that they choose to participate in the coupon program.

Alternatives To Minimize Burdens

NTIA has taken steps to minimize burdens on small retailers and manufacturers in its proposed rule. For example, NTIA has proposed a self-certification process for both retailers and manufacturers for the compliance requirements discussed above. Alternatively NITA could require a third-party certification process, or institute a procedure whereby NTIA certifies the compliance requirements. Either option includes additional steps in the certification process and therefore would increase time and cost.

We have also sought to minimize burdens on small retailers by proposing clear rules with respect to the redemption process. Retailers have certainty that if they submit their coupons within the time established in the rules, they will be reimbursed in a timely manner. This proposal removes any uncertainty on the part of the retailer as to when they can receive full payment.

F. Federal Rules That May Duplicate, Overlap, or Conflict With the Proposed Rules

NTIA is not aware of any Federal rules that may duplicate, overlap or conflict with the proposed rules.

The preceding analysis indicates that the expected burden on small entities to implement the proposed rule would be minimal.

[FR Doc. E6–11754 Filed 7–24–06; 8:45 am]

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Notices

Federal Register
Vol. 71, No. 142
Tuesday, July 25, 2006

This section of the FEDERAL REGISTER contains documents other than rules or proposed rules that are applicable to the public. Notices of hearings and investigations, committee meetings, agency decisions and rulings, delegations of authority, filing of petitions and applications and agency statements of organization and functions are examples of documents appearing in this section.

DEPARTMENT OF AGRICULTURE

Food Safety and Inspection Service

[Docket No. FSIS–2006–0020]

Codex Alimentarius Commission: 13th Session of the Codex Committee on Fresh Fruits and Vegetables

AGENCY: Office of the Under Secretary for Food Safety, USDA.

ACTION: Notice of public meeting, request for comments.

SUMMARY: The Office of the Under Secretary for Food Safety, United States Department of Agriculture (USDA), and the Agricultural Marketing Service (AMS) are sponsoring a public meeting on August 3, 2006 to provide draft U.S. positions and receive public comments on agenda items that will be discussed at the 13th Session of the Codex Committee on Fresh Fruits and Vegetables (CCFFV) of the Codex Alimentarius Commission (Codex), which will be held in Mexico City, Mexico, on September 25–29, 2006. The Under Secretary and AMS recognize the importance of providing interested parties the opportunity to comment on the agenda items that will be debated at this forthcoming Session of the CCFFV.

DATES: The public meeting is scheduled for Thursday, August 3, 2006, from 10 a.m. to 12 noon.

ADDRESSES: The public meeting will be held in Room 3074, USDA, South Agriculture Building, 1400 Independence Avenue SW., Washington, DC. Documents related to the 13th Session of the CCFFV will be accessible via the World Wide Web at the following address: *http://www.codexalimentarius.net/current.asp.*

The Food Safety and Inspection Service (FSIS) invites interested persons to submit comments on this notice. Comments may be submitted by any of the following methods:

Federal eRulemaking Portal: This Web site provides the ability to type short comments directly into the comment field on this Web page or attach a file for lengthier comments. *Go to http://www.regulations.gov* and, in the ''Search for Open Regulations'' box, select ''Food Safety and Inspection Service'' from the agency drop-down menu, then click on ''Submit.'' In the Docket ID column, select the FDMS Docket Number FSIS–2006–0020 to submit or view public comments and to view supporting and related materials available electronically.

Mail, including floppy disks or CD–ROM's, and hand- or courier-delivered items: Send to FSIS Docket Room, Docket Clerk, USDA, FSIS, 300 12th Street, SW., Room 102, Cotton Annex Building, Washington, DC 20250.

Electronic mail: *fsis.regulationscomments@fsis.usda.gov.*

All submissions received must include the Agency name and docket number FSIS–2006–0020.

All comments submitted in response to this notice, as well as research and background information used by FSIS in developing this document, will be posted to the regulations.gov Web site. The background information and comments also will be available for public inspection in the FSIS Docket Room at the address listed above between 8:30 a.m. and 4:30 p.m., Monday through Friday.

FOR FURTHER INFORMATION ABOUT THE 13TH SESSION OF THE CCFFV CONTACT: U.S. Delegate, Dorian Lafond, International Standards Coordinator, Fruit and Vegetable Division, Agricultural Marketing Service, USDA, 1400 Independence Avenue SW., Washington, DC 20250, Phone: (202) 690–4944, Fax: (202) 720–0016, E-mail: *Dorian.Lafond@usda.gov.*

FOR FURTHER INFORMATION ABOUT THE PUBLIC MEETING CONTACT: Ellen Matten, International Issues Analyst, U.S. Codex Office, USDA, FSIS, Room 4861, South Agriculture Building, 1400 Independence Avenue SW., Washington, DC 20250, Phone: (202) 205–7760, Fax: (202) 720–3157. E-mail: *ellen.matten@fsis.usda.gov.*

SUPPLEMENTARY INFORMATION:

Background

The Codex Alimentarius Commission (Codex) was established in 1963 by two United Nations organizations, the Food and Agriculture Organization (FAO) and the World Health Organization (WHO). Codex is the major international organization for protecting the health and economic interests of consumers and encouraging fair international trade in food. Through adoption of food standards, codes of practice, and other guidelines developed by its committees, and by promoting their adoption and implementation by governments, Codex seeks to ensure that the world's food supply is sound, wholesome, free from adulteration, and correctly labeled. In the United States, USDA, The Food and Drug Administration, and the Environmental Protection Agency manage and carry out U.S. Codex activities.

The Codex Committee on Fresh Fruits and Vegetables elaborates world wide standards and codes of practice for fresh fruits and vegetables. It consults with the UN/ECE Working Party on Agricultural Quality Standards in the elaboration of world wide standards and codes of practice with particular regard to ensuring that there is no duplication of standards or codes of practice and that they follow the same broad format. The Committee also consults, as necessary, with other international organizations which are active in the area of standardization of fresh fruits and vegetables. The Committee is hosted by the government of Mexico.

Issues To Be Discussed at the Public Meeting

The following items on the agenda for the 13th Session of CCFFV will be discussed during the public meeting:

- Matters referred to the Committee from other Codex bodies.
- Proposed Layout for Codex Standards for Fresh Fruits and Vegetables.
- Draft Codex Standard for Table Grapes (maturity requirements and list of small berry varieties).
- Draft Codex Standard for Tomatoes (provisions for sizing and size codes).
- Proposed Draft Codex Standard for Apples.
- Proposed Draft Standard for Bitter Cassava.
- Proposed Guidelines for the Quality Control of Fresh Fruits and Vegetables.
- Report on the need for partial or total revision of the Codex Standard for Avocado.

• Proposals for Amendments to the Priority List for the Standardization of Fresh Fruits and Vegetables.

Each issue listed will be fully described in documents distributed, or to be distributed, by the Mexican Secretariat to the Meeting. Members of the public may access or request copies of these documents via the World Wide Web at the following address: *http://www.codexalimentarius.net/current.asp.*

Public Meeting

At the August 3, 2006 public meeting, draft U.S. positions on these agenda items will be described, discussed, and attendees will have the opportunity to pose questions and offer comments. Written comments may be offered at the meeting or sent to the U.S. Delegate for the 13th Session of CCFFV, Dorian Lafond (see **FOR FURTHER INFORMATION ABOUT THE 13TH SESSION OF THE CCFFV CONTACT**). Written comments should state that they relate to activities of the 13th Session of the CCFFV.

Additional Public Notification

Public awareness of all segments of rulemaking and policy development is important. Consequently, in an effort to ensure that minorities, women, and persons with disabilities are aware of this notice, FSIS will announce it on-line through the FSIS Web Page located at *http://www.fsis.usda.gov/regulations/2006_Notices_Index/.* FSIS also will make copies of this **Federal Register** publication available through the FSIS Constituent Update, which is used to provide information regarding FSIS policies, procedures, regulations, **Federal Register** notices, FSIS public meetings, recalls and other types of information that could affect or would be of interest to constituents and stakeholders. The update is communicated via Listserv, a free electronic mail subscription service for industry, trade and farm groups, consumer interest groups, allied health professionals and other individuals who have asked to be included. The update is available on the FSIS Web page. Through the Listserv and Web page, FSIS is able to provide information to a much broader and more diverse audience. In addition, FSIS offers an e-mail subscription service which provides automatic and customized access to selected food safety news and information. This service is available at *http://www.fsis.usda.gov/news_and_events/email_ subscription/.* Options range from recalls to export information to regulations, directives and notices. Customers can add or delete subscriptions themselves and have the option to password protect their account.

Done at Washington, DC, on July 20, 2006.

F. Edward Scarbrough,

U.S. Manager for Codex Alimentarius.

[FR Doc. E6–11787 Filed 7–24–06; 8:45 am]

BILLING CODE 3410–DM–P

DEPARTMENT OF AGRICULTURE

Forest Service

Newspapers To Be Used for Publication of Legal Notice of Appealable Decisions and Publication of Notice of Proposed Actions for Southern Region; Alabama, Kentucky, Georgia, Tennessee, Florida, Louisiana, Mississippi, Virginia, West Virginia, Arkansas, Oklahoma, North Carolina, South Carolina, Texas, Puerto Rico

AGENCY: Forest Service, USDA.

ACTION: Notice.

SUMMARY: Deciding Officers in the Southern Region will publish notice of decisions subject to administrative appeal under 36 CFR parts 215 and 217 in the legal notice section of the newspapers listed in the **SUPPLEMENTARY INFORMATION** section of this notice. As provided in 36 CFR part 215.5 and 36 CFR part 217.5(d), the public shall be advised through **Federal Register** notice, of the newspaper of record to be utilized for publishing legal notice of decisions. Newspaper publication of notice of decisions is in addition to direct notice of decisions to those who have requested it and to those who have participated in project planning. Responsible Officials in the Southern Region will also publish notice of proposed actions under 36 CFR part 215 in the newspapers that are listed in the **SUPPLEMENTARY INFORMATION** section of this notice. As provided in 36 CFR part 215.5, the public shall be advised, through **Federal Register** notice, of the newspaper of record to be utilized for publishing notices on proposed actions. Additionally, the Deciding Officers in the Southern Region will publish notice of the opportunity to object to a proposed authorized hazardous fuel reduction project under 36 CFR part 218.4 in the legal notice section of the newspapers listed in the **SUPPLEMENTARY INFORMATION** section of this notice.

DATES: Use of these newspapers for purposes of publishing legal notice of decisions subject to appeal under 36 CFR parts 215 and 217, notices of proposed actions under 36 CFR part 215, and notices of the opportunity to object under 36 CFR part 218 shall begin on or after the date of this publication.

FOR FURTHER INFORMATION CONTACT: Cheryl Herbster, Regional Appeals and Litigation Coordinator, Southern Region, Planning, 1720 Peachtree Road, NW., Atlanta, Georgia 30309, Phone: 404–347–5235.

SUPPLEMENTARY INFORMATION: Deciding Officers in the Southern Region will give legal notice of decisions subject to appeal under 36 CFR part 217, the Responsible Officials in the Southern Region will give notice of decisions subject to appeal under 36 CFR part 215 and opportunity to object to a proposed authorized hazardous fuel reduction project under 36 CFR part 218 in the following newspapers which are listed by Forest Service administrative unit. Responsible Officials in the Southern Region will also give notice of proposed actions under 36 CFR part 215 in the following newspapers of record which are listed by Forest Service administrative unit. The timeframe for comment on a proposed action shall be based on the date of publication of the notice of the proposed action in the newspaper of record. The timeframe for appeal shall be based on the date of publication of the legal notice of the decision in the newspaper of record for 36 CFR parts 215 and 217. The timeframe for an objection shall be based on the date of publication of the legal notice of the opportunity to object for projects subject to 36 CFR part 218. Where more than one newspaper is listed for any unit, the first newspaper listed is the newspaper of record that will be utilized for publishing the legal notice of decisions and calculating timeframes. Secondary newspapers listed for a particular unit are those newspapers the Deciding Officer/Responsible Official expects to use for purposes of providing additional notice.

The following newspapers will be used to provide notice.

Southern Region

Regional Forester Decisions

Affecting National Forest System lands in more than one Administrative unit of the 15 in the Southern Region, *Atlanta Journal-Constitution*, published daily in Atlanta, GA.

Affecting National Forest System lands in only one Administrative unit or only one Ranger District will appear in the newspaper of record elected by the National Forest, National Grassland, National Recreation Area, or Ranger District as listed below.

National Forests in Alabama, Alabama

Forest Supervisor Decisions

Montgomery Adviser, published daily in Montgomery, AL.

District Ranger Decisions

Bankhead Ranger District: Northwest Alabamian, published bi-weekly (Wednesday and Saturday) in Haleyville, AL.
Conecuh Ranger District: The Andalusia Star News, published daily (Tuesday through Saturday) in Andalusia, AL.
Oakmulgee Ranger District: The Tuscaloosa News, published daily in Tuscaloosa, AL.
Shoal Creek Ranger District: The Anniston Star, published daily in Anniston, AL.
Talladega Ranger District: The Daily Home, published daily in Talladega, AL.
Tuskegee Ranger District: Tuskegee News, published weekly (Thursday) in Tuskegee, AL.

Caribbean National Forest, Puerto Rico

Forest Supervisor Decisions

El Nuevo Dia, published daily in Spanish in San Juan, PR.
San Juan Star, published daily in English in San Juan, PR.

Chattahoochee-Oconee National Forest, Georgia

Forest Supervisor Decisions

The Times, published daily in Gainesville, GA.

Districe Ranger Decisions

Armuchee-Cohutta Ranger District: Daily Citizen, published daily in Dalton, GA.
Brasstown Ranger District: North Georgia News, (newspaper of record) published weekly (Wednesday) in Blairsville, GA.
Towns County Herald, (secondary) published weekly (Thursday) in Hiawassee, GA.
The Dahlonega Nuggett, (secondary) published weekly (Wednesday) in Dahlonega, GA.
Chattooga Ranger District: Northeast Georgian, (newspaper of record) published bi-weekly (Tuesday and Friday) in Cornelia, GA.
Chieftain & Toccoa Record, (secondary) published bi-weekly (Tuesday and Friday) in Toccoa, GA.
White County News Telegraph, (secondary) published weekly (Thursday) in Cleveland, GA.
The Dahlonega Nuggett, (secondary) published weekly (Thursday) in Dahlonega, GA.
Oconee Ranger District: Eatonton Messenger, published weekly (Thursday) in Eatonton, GA.
Tallulah Ranger District: Clayton Tribune, published weekly (Thursday) in Clayton, GA.
Toccoa Ranger District: The News Observer (newspaper of record) published bi-weekly (Tuesday and Friday) in Blue Ridge, GA.
The Dahlonega Nuggett, (secondary) published weekly (Wednesday) in Dahlonega, GA.

Cherokee National Forest, Tennessee

Forest Supervisor Decisions

Knoxville News Sentinel, published daily in Knoxville, TN.

District Ranger Decisions

Nolichucky-Unaka Ranger District: Greeneville Sun, published daily (except Sunday) in Greeneville, TN.
Ocoee-Hiwassee Ranger District: Polk County News, published weekly (Wednesday) in Benton, TN.
Telico Ranger District: Monroe County Advocate & Democrat, published tri-weekly (Wednesday, Friday, and Sunday) in Sweetwater, TN.
Watauga Ranger District: Johnson City Press, published daily in Johnson City, TN.

Daniel Boone National Forest, Kentucky

Forest Supervisor Decisions

Lexington Herald-Leader, published daily in Lexington, KY.

District Ranger Decisions

Cumberland Ranger District: Lexington Herald-Leader, published daily in Lexington, KY.
London Ranger District: The Sentinel-Echo, published tri-weekly (Monday, Wednesday, and Friday) in London, KY.
Redbird Ranger District: Manchester Enterprise, published weekly (Thursday) in Manchester, KY.
Stearns Ranger District: McCreary County Record, published weekly (Tuesday) in Whitley City, KY.

National Forests in Florida, Florida

Forest Supervisor Decisions

The Tallahassee Democrat, published daily in Tallahassee, FL.

District Ranger Decisions

Apalachicola Ranger District: Calhoun-Liberty Journal, published weekly (Wednesday) in Bristol, FL.
Lake George Ranger District: The Ocala Star Banner, published daily in Ocala, FL.
Osceola Ranger District: The Lake City Reporter, published daily (Monday–Saturday) in Lake City, FL.
Seminole Ranger District: The Daily Commercial, published daily in Leesburg, FL.
Wakulla Ranger District: The Tallahassee Democrat, published daily in Tallahassee, FL.

Francis Marion and Sumter National Forests, South Carolina

Forest Supervisor Decisions

The State, published daily in Columbia, SC.

District Ranger Decisions

Andrew Pickens Ranger District: The Daily Journal, published daily (Tuesday through Saturday) in Seneca, SC.
Enoree Ranger District: Newberry Observer, published tri-weekly (Monday, Wednesday, and Friday) in Newberry, SC.
Long Cane Ranger District: The State, published daily in Columbia, SC.
Wambaw Ranger District: Post and Courier, published daily in Charleston, SC.
Witherbee Ranger District: Post and Courier, published daily in Charleston, SC.

George Washington and Jefferson National Forests, Virginia and West Virginia

Forest Supervisor Decisions

Roanoke Times, published daily in Roanoke, VA.

District Ranger Decisions

Clinch Ranger District: Coalfield Progress, published bi-weekly (Tuesday and Thursday) in Norton, VA.
Deerfield Ranger District: Daily News Leader, published daily in Staunton, VA.
Dry River Ranger District: Daily News Record, published daily (except Sunday) in Harrisonburg, VA.
Glenwood-Pedlar Ranger District: Roanoke Times, published daily in Roanoke, VA.
James River Ranger District: Virginian Review, published daily (except Sunday) in Covington, VA.
Lee Ranger District: Shenandoah Valley Herald, published weekly (Wednesday) in Woodstock, VA.
Mount Rogers National Recreation Area: Bristol Herald Courier, published daily in Bristol, VA.
New Castle Ranger District: Roanoke Times, published daily in Roanoke, VA.

New River Ranger District: Roanoke Times, published daily in Roanoke, VA.
Warm Springs Ranger District: The Recorder, published weekly (Thursday) in Monterey, VA.

Kisatchie National Forest, Louisiana

Forest Supervisor Decisions

The Town Talk, published daily in Alexandria, LA.

District Ranger Decisions

Calcasieu Ranger District: The Town Talk, (newspaper of record) published daily in Alexandria, LA.
The Leesville Ledger, (secondary) published tri-weekly (Tuesday, Friday, and Sunday) in Leesville, LA.
Caney Ranger District: Minden Press Herald, (newspaper of record) published daily in Minden, LA.
Homer Guardian Journal, (secondary) published weekly (Wednesday) in Homer, LA.
Catahoula Ranger District: The Town Talk, published daily in Alexandria, LA.
Kisatchie Ranger District: Natchitoches Times, published daily (Tuesday thru Friday and on Sunday) in Natchitoches, LA.
Winn Ranger District: Winn Parish Enterprise, published weekly (Wednesday) in Winnfield, LA.

Land Between The Lakes National Recreation Area, Kentucky and Tennessee

Area Supervisor Decisions

The Paducah Sun, published daily in Paducah, KY.

National Forests in Mississippi, Mississippi

Forest Supervisor Decisions

Clarion-Ledger, published daily in Jackson, MS.

District Ranger Decisions

Bienville Ranger District: Clarion-Ledger, published daily in Jackson, MS.
Chickasawhay Ranger District: Clarion-Ledger, published daily in Jackson, MS.
Delta Ranger District: Clarion-Ledger, published daily in Jackson, MS.
De Soto Ranger District: Clarion Ledger, published daily in Jackson, MS.
Holly Springs Ranger District: Clarion-Ledger, published daily in Jackson, MS.
Homochitto Ranger District: Clarion-Ledger, published daily in Jackson, MS.
Tombigbee Ranger District: Clarion-Ledger, published daily in Jackson, MS.

National Forests in North Carolina, North Carolina

Forest Supervisor Decisions

The Asheville Citizen-Times, published daily in Asheville, NC.

District Ranger Decisions

Appalachian Ranger District: The Asheville Citizen-Times, published daily in Asheville, NC.
Cheoah Ranger District: Graham Star, published weekly (Thursday) in Robbinsville, NC.
Croatan Ranger District: The Sun Journal, published daily in New Bern, NC.
Grandfather Ranger District: McDowell News, published daily in Mario, NC.
Highlands Ranger District: The Highlander, published weekly (mid May–mid Nov, Tues & Fri; mid Nov–mid May, Tues only) in Highland, NC.
Pisgah Ranger District: The Asheville Citizen-Times, published daily in Asheville, NC.
Tusquitee Ranger District: Cherokee Scout, published weekly (Wednesday) in Murphy, NC.
Uwharrie Ranger District: Montgomery Herald, published weekly (Wednesday) in Troy, NC.
Wayah Ranger District: The Franklin Press, published bi-weekly (Tuesday and Friday) in Franklin, NC.

Ouachita National Forest, Arkansas and Oklahoma

Forest Supervisor Decisions

Arkansas Democrat-Gazette, published daily in Little Rock, AR.

District Ranger Decisions

Caddo-Womble Ranger District: Arkansas Democrat-Gazette, published daily in Little Rock, AR.
Jessieville-Winona-Fourche Ranger District: Arkansas Democrat-Gazette, published daily in Little Rock, AR.
Mena-Oden Ranger District: Arkansas Democrat-Gazette, published daily in Little Rock, AR.
Oklahoma Ranger District (Choctaw; Kiamichi; and Tiak) Tulsa World, published daily in Tulsa, OK.
Poteau-Cold Springs Ranger District: Arkansas Domocrat-Gazette, published daily in Little Rock, AR.

Ozark-St. Francis National Forests, Arkansas

Forest Supervisor Decisions

The Courier, published daily (Tuesday through Sunday) in Russellville, AR.

District Ranger Decisions

Bayou Ranger District: The Courier, published daily (Tuesday through Sunday) in Russellville, AR.
Boston Mountain Ranger District: Southwest Times Record, published daily in Fort Smith, AR.
Buffalo Ranger District: Newton County Times, published weekly in Jasper, AR.
Magazine Ranger District: Southwest Times Record, published daily in Fort Smith, AR.
Pleasant Hill Ranger District: Johnson County Graphic, published weekly (Wednesday) in Clarksville, AR.
St. Francis National Forest: The Daily World, published daily (Sunday through Friday) in Helena, AR.
Sylamore Ranger District: Stone County Leader, published weekly (Wednesday) in Mountain View, AR.

National Forests and Grasslands in Texas, Texas

Forest Supervisor Decisions

The Lufkin Daily News, published daily in Lufkin, TX.

District Ranger Decisions

Angelina National Forest: The Lufkin Daily News, published daily in Lufkin, TX.
Caddo & LBJ National Grasslands: Denton Record-Chronicle, published daily in Denton, TX.
Davy Crockett National Forest: The Lufkin Daily News, published daily in Lufkin, TX.
Sabine National Forest: The Lufkin Daily News, published daily in Lufkin, TX.
Sam Houston National Forest: The Courier, published daily in Conroe, TX.

Dated: July 18, 2006.

Thomas A. Peterson,

Deputy Regional Forester, Natural Resources.

[FR Doc. 06–6438 Filed 7–24–06; 8:45 am]

BILLING CODE 3410–11–M

DEPARTMENT OF AGRICULTURE

Forest Service

Eastern Arizona Counties Resource Advisory Committee

AGENCY: Forest Service, USDA.

ACTION: Notice of meeting.

SUMMARY: The Eastern Arizona Counties Resource Advisory Committee will meet in Payson, Arizona. The purpose of the meeting is to review and approve projects for funding.

DATES: The meeting will be held August 11, 2006, at 11 a.m.

ADDRESSES: The meeting will be held at the Gila Community College Payson Campus, 201 Mud Springs Road, Payson

Arizona. Send written comments to Robert Dyson, Eastern Arizona Counties Resource Advisory Committee, c/o Forest Service, USDA, P.O. Box 640, Springerville, Arizona 85938 or electronically to *rdyson@fs.fed.us.*

FOR FURTHER INFORMATION CONTACT: Robert Dyson, Public Affairs Officer, Apache-Sitgreaves National Forests (928) 333–4301.

SUPPLEMENTARY INFORMATION: The meeting is open to the public. Committee discussion is limited to Forest Service staff and Committee members. However, persons who wish to bring Public Law 106–393 related matters to the attention of the Committee may file written statements with the Committee staff before the meeting. Opportunity for public input will be provided.

Dated: July 19, 2006.

Elaine Zieroth,

Forest Supervisor, Apache-Sitgreaves National Forests.

[FR Doc. 06–6435 Filed 7–24–06; 8:45 am]

BILLING CODE 3410–11–M

DEPARTMENT OF AGRICULTURE

Forest Service

RIN 0596–AC44

Notice of Extension of Public Comment Period for Proposed Native Plant Material Policy (FSM 2070)

AGENCY: Forest Service, USDA.

ACTION: Notice of extension of public comment period.

SUMMARY: The Forest Service is extending the public comment period an additional 30 days for the Proposed Native Plant Material Policy (FSM 2070). The Forest Service is proposing to establish a new directive to Forest Service Manual (FSM) 2070 for native plant materials, which will provide direction for the use, growth, development, and storage of native plant materials. Public comment is invited and will be considered in development of the final directive. A copy of the proposed directive is available at *http://www.fs.fed.us/rangelands/whoweare/documents/FSM2070_Final_2_062905.pdf*

DATES: Comments must be received in writing, on or before August 24, 2006.

ADDRESSES: Send written comments via the U.S. Postal Service to; Native Plant Materials Proposed Directive, Rangeland Management Staff, MAIL STOP 1103, Forest Service, USDA, 1400 Independence Avenue, SW., Washington, DC 20250, or by facsimile to (202) 205–1096 or by e-mail to *nativeplant@fs.fed.us*. If comments are sent via facsimile or email, the public is asked not to submit duplicate written comments by mail. Please confine comments to issues pertinent to the proposed directive and explain the reasons for any recommended changes. All comments, including names and addresses when provided, are placed in the record and are available for public inspection and copying at 201 14th Street, SW., Washington, DC, during regular business hours, 8:30 a.m. to 4:30 p.m., Monday through Friday, except holidays. Persons wishing to inspect the comments are encouraged to call in advance to Brian Boyd, (202) 205–1496 to facilitate entrance into the building.

FOR FURTHER INFORMATION CONTACT: Larry Stritch, Rangeland Management Staff, USDA Forest Service, Mailstop 1103, 1400 Independence Avenue, SW., Washington, DC 20250, (202) 205–1279.

SUPPLEMENTARY INFORMATION: Title 36 CFR 219.10(b) states: ''The overall goal of the ecological element of sustainability is to provide a framework to contribute to sustaining native ecological systems by providing ecological conditions to support diversity of native plant and animal species in the plan area.'' Executive Order 13112 (February 3, 1999, sec. 2(a)(2)(IV)) on invasive species states the agencies will ''provide for restoration of native species and habitat conditions in ecosystems that have been invaded [by non-native species].'' In accordance with the executive order and regulation, the Forest Service is developing a new proposed directive to Forest Service Manual (FSM) 2070, Native Plant Materials, which addresses the uses of native plant materials in the revegetation, restoration, and rehabilitation of National Forest System lands in order to achieve the Agency's goal of providing for the diversity of plant and animal communities. The proposed policy would direct collaboration with Federal, State, and local government entities and the public to develop and implement a program for native plant materials for use in revegetation, restoration, and rehabilitation.

In proposing this new policy, the Forest Service's goal is to promote the use of native plant materials in revegetation for restoration and rehabilitation in order to manage and conserve terrestrial and aquatic biological diversity. The proposed policy defines a native plant as: all indigenous terrestrial and aquatic plant species that evolved naturally in an ecosystem. The proposed policy also requires the use of best available information to choose ecologically adapted plant materials for the site and situation. Further, the proposed policy states that native plants are to be used when timely natural regeneration of the native plant community is not likely to occur; native plant materials are the first choice in revegetation for restoration and rehabilitation efforts. Nonnative, non-invasive plant species may be used when needed: (1) In emergency conditions to protect basic resource values such as soil stability and water quality; (2) as an interim, non-persistent measure designed to aid in new establishment of native plants (unless natural soil, water and biotic conditions have been permanently altered); (3) native plant species are not available; and (4) when working in permanently altered plant communities. Under no circumstances will nonnative invasive plant species be used.

When the proposed policy is issued as final, the Forest Service will: (1) Undertake a comprehensive assessment of needs (type and amount) for native plant materials; (2) invest in a long-term commitment to research and development, education, and technology transfer for native plant materials; (3) expand efforts to increase the availability of native plant materials; and (4) collaborate with other federal agencies; tribal, State, and local governments; academic institutions; and the private sector.

Dated: July 19, 2006.

Dale N. Bosworth,

Chief, Forest Service.

[FR Doc. E6–11838 Filed 7–24–06; 8:45 am]

BILLING CODE 3410–11–P

COMMISSION ON CIVIL RIGHTS

Agenda and Notice of Public Meeting of the Florida Advisory Committee

Notice is hereby given, pursuant to the provisions of the rules and regulations of the U.S. Commission on Civil Rights, that a planning meeting conference call of the Florida Advisory Committee to the United States Commission on Civil Rights will convene at 2 p.m. (EST) and adjourn at 4 p.m. (EST) on Thursday, August 3, 2006. The purpose of the conference call is to discuss the Committee's report, *Desegregation of Public School Districts in Florida: School Districts with Unitary Status and Districts Under Court Jurisdiction Have Similar Integration Patterns.*

This conference call is available to the public through the following call-in

number: 800–497–7708, conference contact name is Peter Minarik. Any interested member of the public may call this number and listen to the meeting. Callers can expect to incur charges for calls not initiated using the supplied call-in number or over wireless lines and the Commission will not refund any incurred charges. Callers will incur no charge for calls using the call-in number over land-line connections. Persons with hearing impairments may also follow the proceedings by first calling the Federal Relay Service at 1–800–977–8339 and providing the Service with the conference call number and the contact name Peter Minarik.

To ensure that the Commission secures an appropriate number of lines for the public, persons are asked to register by contacting Peter Minarik, Southern Regional Office, (404) 562–7000, by Monday, August 1, 2006.

The meeting will be conducted pursuant to the provisions of the rules and regulations of the Commission.

Dated at Washington, DC, July 20, 2006.

Ivy Davis,

Acting Chief, Regional Programs Coordination Unit.

[FR Doc. E6–11841 Filed 7–24–06; 8:45 am]

BILLING CODE 6335–01–P

COMMISSION ON CIVIL RIGHTS

Agenda and Notice of Public Meeting of the Florida Advisory Committee

Notice is hereby given, pursuant to the provisions of the rules and regulations of the U.S. Commission on Civil Rights, that a planning meeting of the Florida Advisory Committee to the Commission will convene at 4 p.m. and adjourn at 6:30 p.m. on September 12, 2006, at the Marriott Orlando Airport Hotel, Orlando, Florida, and will reconvene at the same location at 8:30 a.m. and adjourn at 11:30 a.m. on September 13, 2006. The purpose of the meeting is to give Committee members an orientation to their duties and responsibilities, discuss the Committee's report on migrant education, and consider a project for 2007.

Persons desiring additional information should contact Peter Minarik, PhD., Regional Director, Southern Regional Office, U.S. Commission on Civil Rights, 404–562–7000. Hearing-impaired individuals may obtain additional information by calling TDD 202–376–8116, and hearing-impaired persons who will attend the meeting and require the services of a sign language interpreter should contact the Regional Office at least ten (10) working days before the scheduled date of the meeting.

The meeting will be conducted pursuant to the provisions of the rules and regulations of the Commission.

Dated at Washington, DC, July 19, 2006.

Ivy Davis,

Acting Chief, Regional Programs Coordination Unit.

[FR Doc. E6–11842 Filed 7–24–06; 8:45 am]

BILLING CODE 6335–01–P

COMMISSION ON CIVIL RIGHTS

Agenda and Notice of Public Meeting of the Kentucky Advisory Committee

Notice is hereby given, pursuant to the provisions of the rules and regulations of the U.S. Commission on Civil Rights, that a planning meeting of the Kentucky Advisory Committee to the Commission will convene at 12:30 p.m. and adjourn at 5 p.m. on Thursday, August 10, 2006, at Room 230, Gardiner Hall, University of Louisville, Louisville, Kentucky. The purpose of the meeting is an orientation of Committee members, a discussion of the Committee's report on the achievement gap between African American students and white students, and a discussion of a project for 2007.

Persons desiring additional information, or planning a presentation to the Committee, should contact Peter Minarik, Ph.D., Regional Director, Southern Regional Office, U.S. Commission on Civil Rights at (404) 562–7000. Hearing impaired individuals may obtain additional information by calling TDD 202–376–8116, and hearing-impaired persons who will attend the meeting and require the services of a sign language interpreter should contact the Regional Office at least ten (10) working days before the scheduled date of the meeting.

The meeting will be conducted pursuant to the provisions of the rules and regulations of the Commission.

Dated at Washington, DC, July 19, 2006.

Ivy Davis,

Acting Chief, Regional Programs Coordination Unit.

[FR Doc. E6–11843 Filed 7–24–06; 8:45 am]

BILLING CODE 6335–01–P

DEPARTMENT OF COMMERCE

Submission for OMB Review; Comment Request

The Department of Commerce (DOC) has submitted to the Office of Management and Budget (OMB) for clearance the following proposal for collection of information under the provisions of the Paperwork Reduction Act (44 U.S.C. Chapter 35).

Agency: Bureau of Economic Analysis.

Title: Survey of Ocean Freight Revenues and Foreign Expenses of United States Carriers (BE–30) and Survey of U.S. Airline Operators' Foreign Revenues and Expenses (BE–37).

Form Number(s): BE–30/BE–37.

Agency Approval Number: 0608–0011.

Type of Request: Extension of a currently approved collection.

Burden: 780 hours (BE–30); 304 hours (BE–37).

Number of Respondents: 39 per quarter; 156 annually (BE–30); 19 per quarter; 76 annually (BE–37).

Average Hours Per Response: 5 hours (BE–30); 4 hours (BE–37).

Needs and Uses: The Bureau of Economic Analysis (BEA) is responsible for the compilation of the U.S. international transactions accounts (ITA), which it publishes quarterly in news releases, on its web site, and in its monthly journal, the *Survey of Current Business.* These accounts provide a statistical summary of all U.S. international transactions and, as such, are one of the major statistical products of BEA. They are used extensively by both government and private organizations for national and international economic policy formulation and for analytical purposes. The information collected in these surveys is used to develop the ''transportation'' portion of the ITA. Without this information, an integral component of the ITA would be omitted. No other Government agency collects comprehensive quarterly data on U.S. ocean carriers' freight revenues and foreign expenses or U.S. airline operators' foreign revenues and expenses.

These surveys request information from U.S. ocean and air carriers engaged in international transportation of goods and/or passengers. The information is collected on a quarterly basis from U.S. ocean and air carriers whose total annual covered revenues or total annual covered expenses are, or are expected to be, $500,000 or more. U.S. ocean and air carriers whose total annual covered revenues and total annual covered expenses are, or are expected to be, each below $500,000 are exempt from reporting.

Affected Public: U.S. ocean and air carriers.

Frequency: Quarterly.

Respondent's Obligation: Mandatory.

Legal Authority: The International Investment and Trade in Services Survey Act, 22 U.S.C. 3101–3108, as amended.

OMB Desk Officer: Paul Bugg, (202) 395–3093.

You may obtain copies of the above information collection proposal by writing Diane Hynek, Departmental Paperwork Clearance Officer, Officer of the Chief Information Officer, Department of Commerce, Room 6625, 14th and Constitution Avenue, NW., Washington, DC 20230, or via email at *dhynek@doc.gov.*

Send written comments on the proposed information collection within 30 days of publication of this notice to the Office of Management and Budget, O.I.R.A., Attention PRA Desk Officer for BEA, via email at *pbugg@omb.eop.gov*, or by fax at 202–395–7245.

Dated: July 20, 2006.

Madeleine Clayton,

Management Analyst, Office of Chief Information Officer.

[FR Doc. E6–11810 Filed 7–24–06; 8:45 am]

BILLING CODE 3510–06–P

DEPARTMENT OF COMMERCE

Submission for OMB Review; Comment Request

The Department of Commerce (DOC) has submitted to the Office of Management and Budget (OMB) for clearance the following proposal for collection of information under provisions of the Paperwork Reduction Act (44 U.S.C. Chapter 35).

Agency: Bureau of Industry and Security (BIS).

Title: Voluntary Customer Service Survey.

Agency Form Number: N/A.

OMB Approval Number: 0694–0xxx.

Type of Request: New Collection.

Burden: 667 hours.

Average Time Per Response: 10 minutes.

Number of Respondents: 4,000 respondents.

Needs and Uses: This collection of information is required to obtain feedback on the quality of services BIS delivers to the public. This information will be used to improve the quality of services and to measure Government performance in accordance with the Government Performance and Results Act. This survey will be voluntary and not more than one page in length.

Affected Public: Individuals, businesses or other for-profit institutions.

Respondent's Obligation: Voluntary.

OMB Desk Officer: David Rostker.

Copies of the above information collection proposal can be obtained by calling or writing Diana Hynek, DOC Paperwork Clearance Officer, (202) 482–0266, Department of Commerce, Room 6625, 14th and Constitution Avenue, NW., Washington, DC 20230.

Written comments and recommendations for the proposed information collection should be sent within 30 days of publication of this notice to David Rostker, OMB Desk Officer, email address *David_Rostker@omb.eop.gov* or fax number, (202) 395–7285.

Dated: July 20, 2006.

Madeleine Clayton,

Management Analyst, Office of the Chief Information Officer.

[FR Doc. E6–11812 Filed 7–24–06; 8:45 am]

BILLING CODE 3510–DT–P

DEPARTMENT OF COMMERCE

Submission for OMB Review; Comment Request

The Department of Commerce (DOC) has submitted to the Office of Management and Budget (OMB) for clearance the following proposal for collection of information under the provisions of the Paperwork Reduction Act (44 U.S.C. Chapter 35).

Agency: Bureau of Economic Analysis.

Title: Survey of Foreign Ocean Carriers' Expenses in the United States.

Form Number(s): BE–29.

Agency Approval Number: 0608–0012.

Type of Request: Extension of a currently approved collection.

Burden: 624 hours.

Number of Respondents: 156 annually.

Average Hours Per Response: 4 hours.

Needs and Uses: The Bureau of Economic Analysis (BEA) is responsible for the compilation of the U.S. international transactions accounts (ITA), which it publishes quarterly in news releases, on its web site, and in its monthly journal, the *Survey of Current Business.* These accounts provide a statistical summary of all U.S. international transactions and, as such, are one of the major statistical products of BEA. They are used extensively by both government and private organizations for national and international economic policy formulation and for analytical purposes. The information collected in this survey is used to develop the ''transportation'' portion of the ITA. Without this information, an integral component of the ITA would be omitted. No other Government agency collects comprehensive annual data on foreign ocean carriers' expenses in the United States.

The survey requests information from U.S. agents of foreign ocean carriers operating in the United States. The information is collected on an annual basis from U.S. agents that handle 40 or more port calls in the reporting period by foreign ocean vessels, and covered expenses for all foreign ocean vessels handled by the U.S. agent were $250,000 or more. A report is not required if the total number of port calls by foreign ocean vessels handled by the U.S. agent in the reporting period is fewer than 40, or total annual covered expenses for all foreign ocean vessels handled by the U.S. agent are below $250,000.

Affected Public: U.S. agents of foreign ocean carriers.

Frequency: Annually.

Respondent's Obligation: Mandatory.

Legal Authority: The International Investment and Trade in Services Survey Act, 22 U.S.C. 3101–3108, as amended.

OMB Desk Officer: Paul Bugg, (202) 395–3093.

You may obtain copies of the above information collection proposal by writing Diane Hynek, Departmental Paperwork Clearance Officer, Officer of the Chief Information Officer, Department of Commerce, Room 6625, 14th and Constitution Avenue, NW., Washington, DC 20230, or via e-mail at *dhynek@doc.gov.*

Send written comments on the proposed information collection within 30 days of publication of this notice to the Office of Management and Budget, O.I.R.A., Attention PRA Desk Officer for BEA, via e-mail at *pbugg@omb.eop.gov,* or by fax at 202–395–7245.

Dated: July 20, 2006.

Madeleine Clayton,

Management Analyst, Office of Chief Information Officer.

[FR Doc. E6–11813 Filed 7–24–06; 8:45 am]

BILLING CODE 3510–06–P

DEPARTMENT OF COMMERCE

Submission for OMB Review; Comment Request

The Department of Commerce (DOC) has submitted to the Office of Management and Budget (OMB) for clearance the following proposal for collection of information under the provisions of the Paperwork Reduction Act (44 U.S.C. Chapter 35).

Agency: Bureau of Economic Analysis (BEA), Commerce.

Title: Survey of Foreign Airline Operators' Revenues and Expenses in the United States.

Form Number(s): BE–9.

Agency Approval Number: 0608–0068.

Type of Request: Extension of a currently approved collection.

Burden: 1,920 hours.

Number of Respondents: 60 per quarter; 240 annually.

Average Hours Per Response: 8 hours.

Needs and Uses: The Bureau of Economic Analysis (BEA) is responsible for the compilation of the U.S. international transactions accounts (ITA), which it publishes quarterly in news releases, on its Web site, and in its monthly journal, the Survey of Current Business. These accounts provide a statistical summary of all U.S. international transactions and, as such, are one of the major statistical products of BEA. They are used extensively by both government and private organizations for national and international economic policy formulation and for analytical purposes. The information collected in this survey is used to develop the ''transportation'' portion of the ITA. Without this information, an integral component of the ITA would be omitted. No other Government agency collects comprehensive quarterly data on foreign airline operators' revenues and expenses in the United States.

The survey requests information from U.S. agents of foreign air carriers operating in the United States. The information is collected on a quarterly basis from foreign air carriers with annual total covered revenues or annual total covered expenses incurred in the United States of $5,000,000 or more. Foreign air carriers with annual total covered revenues and annual total covered expenses each below $5,000,000 are exempt from reporting.

Affected Public: U.S. agents of foreign air carriers.

Frequency: Quarterly.

Respondent's Obligation: Mandatory.

Legal Authority: The International Investment and Trade in Services Survey Act, 22 U.S.C. 3101–3108, as amended.

OMB Desk Officer: Paul Bugg, (202) 395–3093.

You may obtain copies of the above information collection proposal by writing Diana Hynek, Departmental Paperwork Clearance Officer, Office of the Chief Information Officer, Department of Commerce, Room 6625, 14th and Constitution Avenue, NW., Washington, DC 20230, or via e-mail at *dhynek@doc.gov.*

Send written comments on the proposed information collection within 30 days of publication of this notice to the Office of Management and Budget, O.I.R.A., Attention PRA Desk Officer for BEA, via e-mail at *pbugg@omb.eop.gov,* or by FAX at 202–395–7245.

Dated: July 20, 2006.

Madeleine Clayton,

Management Analyst, Office of Chief Information Officer.

[FR Doc. E6–11814 Filed 7–24–06; 8:45 am]

BILLING CODE 3510–06–P

DEPARTMENT OF COMMERCE

Foreign–Trade Zones Board

Order No. 1465

Grant of Authority for Subzone Status, Eastman Kodak Company, (X–ray Film, Color Paper, Digital Media, Inkjet Paper, Entertainment Imaging, and Health Imaging), Lawrenceville, Georgia

Pursuant to its authority under the Foreign–Trade Zones Act of June 18, 1934, as amended (19 U.S.C. 81a–81u), the Foreign–Trade Zones Board (the Board) adopts the following Order:

WHEREAS, the Foreign–Trade Zones Act provides for '' . . . the establishment . . . of foreign–trade zones in ports of entry of the United States, to expedite and encourage foreign commerce, and for other purposes,'' and authorizes the Foreign–Trade Zones Board to grant to qualified corporations the privilege of establishing foreign–trade zones in or adjacent to U.S. Customs ports of entry;

WHEREAS, the Board's regulations (15 CFR Part 400) provide for the establishment of special–purpose subzones when existing zone facilities cannot serve the specific use involved, and when the activity results in a significant public benefit and is in the public interest;

WHEREAS, Georgia Foreign–Trade Zone, Inc., grantee of Foreign–Trade Zone 26, has made application to the Board for authority to establish special–purpose subzone status at the warehousing, processing and distribution facility (X–ray film, color paper, digital media, inkjet paper, entertainment imaging, and health imaging) of the Eastman Kodak Company, located in Lawrenceville, Georgia (FTZ Docket 47–2005, filed 9/26/2005; amended 5/15/2006);

WHEREAS, notice inviting public comment has been given in the **Federal Register** (70 FR 57556–57557, 10/3/2005); and,

WHEREAS, the Board adopts the findings and recommendations of the examiner's report, and finds that the requirements of the FTZ Act and the Board's regulations would be satisfied, and that approval of the application would be in the public interest;

NOW, THEREFORE, the Board hereby grants authority for subzone status for activity related to X–ray film, color paper, digital media, inkjet paper, entertainment imaging, and health imaging at the warehousing, processing and distribution facility of the Eastman Kodak Company, located in Lawrenceville, Georgia (Subzone 26J), as described in the amended application and **Federal Register** notice, subject to the FTZ Act and the Board's regulations, including Section 400.28, and further subject to a restriction that privileged foreign status (19 CFR Part 146.41) shall be elected:

1. On foreign merchandise that falls under HTSUS headings or subheadings 2821, 2823, all of Chapter 32 or 3901.20 or where the foreign merchandise in question is described as a ''pigment, pigment preparation, masterbatch, plastic concentrate, flush color, paint dispersion, coloring preparation, or colorant.''
2. On foreign merchandise that falls under HTSUS heading 4202, with the exception of merchandise classified in HTSUS categories 4202.91.0090 and 4202.92.9060.

Signed at Washington, DC, this 14th day of July 2006.

David M. Spooner,

Assistant Secretary of Commercefor Import Administration,Alternate ChairmanForeign–Trade Zones Board.

ATTEST:

Andrew McGilvray,

Acting Executive Secretary.

[FR Doc. E6–11873 Filed 7–24–06; 8:45 am]

BILLING CODE 3510–DS–S

DEPARTMENT OF COMMERCE

International Trade Administration

(A–549–813)

Extension of Time Limits for Preliminary Results and Final Results of the Full Sunset Review of the Antidumping Duty Order on Canned Pineapple Fruit from Thailand

AGENCY: Import Administration, International Trade Administration, U.S. Department of Commerce.

EFFECTIVE DATE: July 25, 2006.

FOR FURTHER INFORMATION CONTACT: Zev Primor, Office 4, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th

Street & Constitution Avenue, NW, Washington, DC, 20230; telephone: 202–482–4114.

SUPPLEMENTARY INFORMATION:

Background

The Department of Commerce (''the Department'') initiated the second sunset review of canned pineapple fruit (''CPF'') from Thailand on April 3, 2006. *See Initiation of Five–year ''Sunset'' Reviews*, 71 FR 16551 (April 3, 2006). On April 17, 2006, we received notification of intent to participate from the domestic interested party, Maui Pineapple Co., Ltd., (''Maui'') in accordance with 19 CFR 351.218(d)(3). On May 3, 2006, Maui and the respondent interested parties filed substantive comments with the Department.[1]

On May 22, 2006, the Department issued a preliminary adequacy determination stating that the respondents in the ongoing sunset review did not meet the adequacy requirements. *See* Memorandum from Zev Primor to Tom Futtner, ''Adequacy Determination in Antidumping Duty Sunset Review of Canned Pineapple from Thailand'' (May 22, 2006). On May 30, 2006, and June 8, 2006, we received timely comments pertaining to our adequacy calculation methodology from the respondent interested parties and Maui, respectively. Upon review of the parties' comments, we modified our calculation methodology and determined that the respondent interested parties meet the adequacy requirements. *See* Memorandum from Zev Primor to Tom Futtner, ''Correction to the Adequacy Calculation in the Antidumping Duty Sunset Review of Canned Pineapple Fruit from Thailand'' (July 12, 2006). Consequently, the Department determined to conduct a full sunset review of the antidumping duty order on CPF from Thailand as provided at section 751(c)(5)(A) of the Tariff Act of 1930, as amended (''the Act''), and at 19 CFR 351.218(e)(2)(i) because: (1) the parties' substantive responses met the requirements of 19 CFR 351.218(d)(3), and (2) both the information on the record and our review of the proprietary Customs and Border Protection (''CBP'') data indicated that the respondent interested parties account for more than 50 percent of the exports to the United States, the level that the Department normally considers to be an adequate response to the notice of initiation by respondent interested parties under 19 CFR 351.218(e)(1)(ii)(A). *Id.*

Extension of Time Limits

With respect to the preliminary results of a sunset review, the Department's regulations, at 19 CFR 351.218(f)(1), provide that the Department normally will issue its preliminary results in a full sunset review not later than 110 days after the date of publication of initiation in the **Federal Register**. However, in accordance with section 751(c)(5)(B) of the Act and 19 CFR 351.218(f)(3)(ii), the Department may extend the period of time for making its final determination by not more than 90 days, if it determines that the review is extraordinarily complicated. Because some of the issues are complex, the Department has determined, pursuant to section 751(c)(5)(C)(ii) of the Act, that the sunset review is extraordinarily complicated and will require additional time for the Department to complete its analysis. Due to the complex nature of the CPB and shipment data, revocation of a number of companies during the period of review, and the change from the expedited to a full sunset review, the Department will require additional time to conduct the analysis necessary for the preliminary results.

The Department's preliminary results of the full sunset review of the antidumping duty order on CPF from Thailand are currently scheduled for July 22, 2006, and the final results are currently scheduled for November 29, 2006. As a result of our decision to extend the deadline for the preliminary results of review, the Department intends to issue the preliminary results of the full sunset review of the antidumping duty order on CPF from Thailand no later than October 20, 2006, and the final results of the review no later than February 27, 2007. These dates are 90 days from the originally scheduled dates of the preliminary and final results of this sunset review.

This notice is issued in accordance with sections 751(c)(5)(B) and (C)(ii) of the Act.

Stephen J. Claeys,

Deputy Assistant Secretaryfor Import Administration.

[FR Doc. E6–11839 Filed 7–24–06; 8:45 am]

BILLING CODE 3510–DS–S

[1] The respondent interested parties are: Pineapple Processors Group; the Thai Food Processors Association; Thai Pineapple Canning Industry Corp. Ltd.; Malee Sampran Public Co., Ltd.; The Siam Agro Industry Pineapples and Others Public Co., Ltd.; Great Oriental Food Products Co. Ltd.; Thai Pineapple Products and Other Fruits Co., Ltd.; The Tipco Foods (Thailand) PCL; Pranburi Hotei Co., Ltd.; and Siam Fruit Canning (1988) Co., Ltd.

DEPARTMENT OF COMMERCE

International Trade Administration

(A–122–840)

Carbon and Certain Alloy Steel Wire Rod from Canada: Extension of Time Limit for Preliminary Results of the Antidumping Duty Administrative Review

AGENCY: Import Administration, International Trade Administration, Department of Commerce.

EFFECTIVE DATE: July 25, 2006.

FOR FURTHER INFORMATION CONTACT: Damian Felton or Brandon Farlander, AD/CVD Operations, Office 1, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue, NW, Washington, DC 20230; telephone: (202) 482–0133 or (202) 482–0182, respectively.

SUPPLEMENTARY INFORMATION:

Background

On October 3, 2005, the Department of Commerce (''the Department'') published an opportunity to request an administrative review of the antidumping duty order on carbon and certain alloy steel wire rod from Canada for the period October 1, 2004, to September 30, 2005. *See Antidumping or Countervailing Duty Order, Filing, or Suspended Investigation; Opportunity to Request an Administrative Review*, 70 FR 57558 (October 3, 2005). On May 25, 2006, the Department published in the **Federal Register** a notice extending the time limit for the preliminary results of the administrative review from July 3, 2006, to August 2, 2006. *See Carbon and Certain Alloy Steel Wire Rod from Canada: Extension of Time Limit for Preliminary Results of the Antidumping Duty Administrative Review*, 71 FR 30116 May 25, 2006). The preliminary results of this administrative review are currently due August 2, 2006.

Extension of Time Limit for Preliminary Results

Section 751(a)(3)(A) of the Tariff Act of 1930, as amended (''the Act''), requires the Department to issue preliminary results within 245 days after the last day of the anniversary month of an order. However, if it is not practicable to complete the review within this time period, section 751(a)(3)(A) of the Act allows the Department to extend the time period to a maximum of 365 days.

We determine that completion of the preliminary results of this review by August 2, 2006, is not practicable

because the Department needs additional time to consider all comments filed by the petitioner and to fully analyze the respondent's responses on the record of this review. To accomplish this, and in accordance with section 751(a)(3)(A) of the Act, we are extending the time period for issuing the preliminary results by an additional 90 days until October 31, 2006. Therefore, the preliminary results are now due no later than October 31, 2006. The final results continue to be due 120 days after publication of the preliminary results.

We are issuing and publishing this notice in accordance with sections 751(a)(3)(A) and 777(i)(1) of the Act.

Dated: July 18, 2006.

Stephen J. Claeys,

Deputy Assistant Secretaryfor Import Administration.

[FR Doc. E6–11840 Filed 7–24–06; 8:45 am]

BILLING CODE 3510–DS–S

DEPARTMENT OF COMMERCE

International Trade Administration

A–351–824

Silicomanganese From Brazil: Notice of Rescission of Antidumping Duty Administrative Review

AGENCY: Import Administration, International Trade Administration, Department of Commerce.

SUMMARY: In response to a request from Eramet Marietta Inc., a domestic producer of silicomanganese, the Department of Commerce initiated an administrative review of the antidumping duty order on silicomanganese from Brazil. The period of review is December 1, 2004, through November 30, 2005. We are now rescinding this review because the sole respondent reported that it had no sales or shipments to the United States during the period of review.

EFFECTIVE DATE: July 25, 2006.

FOR FURTHER INFORMATION CONTACT: Yang Jin Chun at (202) 482–5760 or Dmitry Vladimirov at (202) 482–0665, AD/CVD Operations, Office 5, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue, NW, Washington, DC 20230.

SUPPLEMENTARY INFORMATION: The Department of Commerce (the Department) published an antidumping duty order on silicomanganese from Brazil on December 22, 1994. See *Notice of Antidumping Duty Order: Silicomanganese from Brazil*, 59 FR 66003 (December 22, 1994). On December 1, 2005, the Department published a notice of opportunity to request an administrative review of the antidumping duty order for the period of review covering December 1, 2004, through November 30, 2005. See *Notice of Opportunity to Request Administrative Review of Antidumping or Countervailing Duty Order, Finding, or Suspended Investigation*, 70 FR 72109 (December 1, 2005). In accordance with 19 CFR 351.213(b)(1), the petitioner, Eramet Marietta Inc., requested an administrative review of this order with respect to the following affiliated respondents: Rio Doce Manganês S.A., Companhia Paulista de Ferro–Ligas, and Urucum Mineração S.A. (collectively RDM/CPFL).

The Department published the notice of the initiation of the administrative review of the antidumping duty order on silicomanganese from Brazil on February 1, 2006. See *Initiation of Antidumping and Countervailing Duty Administrative Reviews and Request for Revocation in Part*, 71 FR 5241 (February 1, 2006). In response to the Department's questionnaire, RDM/CPFL notified the Department that the company had no entries, exports, or sales of the subject merchandise during the period of review. The Department published the notice of its intent to rescind the administrative review of the antidumping duty order on silicomanganese from Brazil on May 19, 2006. See *Silicomanganese from Brazil: Notice of Intent to Rescind Antidumping Duty Administrative Review*, 71 FR 29123 (May 19, 2006) (*Notice of Intent to Rescind*). The Department based its intent to rescind the review on a customs data query that found no evidence of entries or shipments of the subject merchandise by RDM/CPFL during the period of review. See *Notice of Intent to Rescind*, at 29124.

Rescission of the Administrative Review

The Department will rescind an administrative review with respect to an exporter or producer if the Department concludes that there were no entries, exports, or sales of the subject merchandise during the period of review. See 19 CFR 351.213(d)(3). The Department gave interested parties 15 days from the date of publication of the *Notice of Intent to Rescind* to comment on its intent to rescind this review. No interested party has submitted comments on our intent to rescind this review within the given time period. Accordingly, we are rescinding this administrative review.

In accordance with the Department's clarification of its assessment policy (see *Antidumping and Countervailing Duty Proceedings: Assessment of Antidumping Duties*, 68 FR 23954 (May 6, 2003)), in the event any entries were made during the period of review through intermediaries under U.S. Customs and Border Protection (CBP) case numbers for RDM/CPFL, the Department will instruct CBP to liquidate such entries at the all–others rate in effect on the date of entry.

This notice serves as a reminder to parties subject to administrative protective order (APO) of their responsibility concerning the disposition of proprietary information disclosed under APO in accordance with 19 CFR 351.305(a)(3). Timely written notification of the return or destruction of APO materials or conversion to judicial protective order is hereby requested. Failure to comply with the regulations and terms of an APO is a sanctionable violation.

This notice is issued and published in accordance with 19 CFR 351.213(d)(4) and section 777(i)(1) of the Tariff Act of 1930, as amended.

Dated: July 18, 2006.

Stephen J. Claeys,

Deputy Assistant Secretaryfor Import Administration.

[FR Doc. E6–11837 Filed 7–24–06; 8:45 am]

BILLING CODE 3510–DS–S

DEPARTMENT OF COMMERCE

International Trade Administration

(A–570–806)

Silicon Metal From the People's Republic of China: Initiation of Antidumping Duty New Shipper Reviews

AGENCY: Import Administration, International Trade Administration, Department of Commerce.

SUMMARY: The Department of Commerce (''Department'') has received timely requests to conduct new shipper reviews of the antidumping duty order on silicon metal from the People's Republic of China (''PRC''). In accordance with section 751(a)(2)(B) of the Tariff Act of 1930, as amended (''the Act'') and 19 CFR 351.214(d), we are initiating reviews for Shanghai Jinneng International Trade Co., Ltd. (''Shanghai Jinneng'') and Jiangxi Gangyuan Silicon Industry Co., Ltd. (''Jiangxi Gangyuan'').

EFFECTIVE DATE: July 25, 2006.

FOR FURTHER INFORMATION CONTACT: P. Lee Smith or Scot T. Fullerton, AD/CVD Operations, Office 9, Import Administration, International Trade Administration, U.S. Department of

Commerce, 14th Street and Constitution Avenue, NW, Washington, DC 20230; telephone: (202) 482–1655 or (202) 482–1386, respectively.

SUPPLEMENTARY INFORMATION:

Background

The Department received timely requests from Shanghai Jinneng and Jiangxi Gangyuan on June 23, 2006, pursuant to section 751(a)(2)(B) the Act, and in accordance with 19 CFR 351.214(c), for new shipper reviews of the antidumping duty order on silicon metal from the PRC.[1] *See Antidumping Duty Order: Silicon Metal From the People's Republic of China*, 56 FR 26649 (June 10, 1991).

Pursuant to 19 CFR 351.214(b)(2)(i), 19 CFR 351.214(b)(2)(ii)(A), and 19 CFR 351.214(b)(2)(iii)(A), in their requests for review, Shanghai Jinneng and Jiangxi Gangyuan certified that they did not export the subject merchandise to the United States during the period of investigation (''POI'') and that since the initiation of the investigation they have never been affiliated with any company which exported subject merchandise to the United States during the POI. Furthermore, pursuant to 19 CFR 351.214(b)(2)(ii)(B) and 19 CFR 351.214(b)(2)(iii)(A), Datong Jinneng Industrial Silicon Co., Ltd. (''Datong Jinneng''), Shanghai Jinneng's producer, certified that it did not export the subject merchandise to the United States during the POI and that since the initiation of the investigation it has never been affiliated with any company which exported subject merchandise to the United States during the POI. Additionally, pursuant to 19 CFR 351.214(b)(2)(iii)(B), Shanghai Jinneng, Datong Jinneng, and Jiangxi Gangyuan further certified that their export activities are not controlled by the central government of the PRC.

In accordance with 19 CFR 351.214(b)(2)(iv), Shanghai Jinneng and Jiangxi Gangyuan each submitted documentation establishing the following: (1) the date on which it first shipped subject merchandise for export to the United States and the date on which the subject merchandise was first entered, or withdrawn from warehouse, for consumption; (2) the volume of its first shipment; and (3) the date of its first sale to an unaffiliated customer in the United States.

[1] Both Shanghai Jinneng and Jiangxi Gangyuan revised claims of business proprietary information in their requests for a new shipper review in submissions filed on June 23, 2006. These revisions were filed in response to a request by the Department. *See* Letter from Christopher D. Riker, Program Manager, AD/CVD Operations, Office 9, Import Administration, dated June 20, 2006.

Initiation of Reviews

In accordance with section 751(a)(2)(B) of the Act, and 19 CFR 351.214(d)(1), and based on information on the record, we are initiating new shipper reviews for Shanghai Jinneng and Jiangxi Gangyuan. *See* Memoranda to the File through Christopher D. Riker, Program Manager, AD/CVD Operations, Office 9, Import Administration, from P. Lee Smith, Import Compliance Specialist, AD/CVD Operations, Office 9, Import Administration, regarding New Shipper Initiation Checklists, dated July 18, 2006. We intend to issue the preliminary results of these reviews not later than 180 days after the date on which the reviews were initiated, and the final results of these reviews within 90 days after the date on which the preliminary results are issued.

Pursuant to 19 CFR 351.214(g)(1)(i)(A), the period of review (''POR'') for a new shipper review, initiated in the month immediately following the anniversary month, will be the twelve-month period immediately preceding the anniversary month. Therefore, the POR for the new shipper reviews of Shanghai Jinneng and Jiangxi Gangyuan will be June 1, 2005, through May 31, 2006.

It is the Department's practice to date in cases involving non–market economies to require that a company seeking to establish eligibility for an antidumping duty rate separate from the country–wide rate provide evidence of *de jure* and *de facto* absence of government control over the company's export activities. Accordingly, we will issue questionnaires to Shanghai Jinneng and Jiangxi Gangyuan, including a separate rates section. The reviews will proceed if the responses provide sufficient indication that Shanghai Jinneng and Jiangxi Gangyuan are not subject to either *de jure* or *de facto* government control with respect to their exports of freshwater crawfish tail meat. However, if the exporter does not demonstrate the company's eligibility for a separate rate, then the company will be deemed not separate from the PRC–wide entity, which exported during the POI. An exporter unable to demonstrate the company's eligibility for a separate rate would hence not meet the requirements of CFR 351.214(b)(2)(iii) and its new shipper review will be rescinded. *See*, *e.g.*, *Brake Rotors From the People's Republic of China: Rescission of Second New Shipper Review and Final Results and Partial Rescission of First Antidumping Duty Administrative Review*, 64 FR 61581 (November 12, 1999).

In accordance with section 751(a)(2)(B)(iii) of the Act and 19 CFR 351.214(e), we will instruct U.S. Customs and Border Protection to allow, at the option of the importer, the posting, until the completion of the review, of a single entry bond or security in lieu of a cash deposit for certain entries of the merchandise exported by either Shanghai Jinneng and Jiangxi Gangyuan. We will apply the bonding option under 19 CFR 351.107(b)(1)(i) only to entries from the producer/exporter combination for which these companies have requested a new shipper review, *i.e.*, Shanghai Jinneng/Datong Jinneng and Jiangxi Gangyuan/Jiangxi Gangyuan.

Interested parties that need access to proprietary information in these new shipper reviews should submit applications for disclosure under administrative protective orders in accordance with 19 CFR 351.305 and 351.306.

This initiation and notice are issued and published in accordance with section 751(a) of the Act, 19 CFR 351.214(d) and 19 CFR 351.221(b)(1).

Dated: July 18, 2006.

Stephen J. Claeys,

Deputy Assistant Secretaryfor Import Administration.

[FR Doc. E6–11835 Filed 7–24–06; 8:45 am]

BILLING CODE 3510–DS–S

DEPARTMENT OF COMMERCE

National Institute of Standards and Technology

[Docket No.: 060705187–6187–01]

National Earthquake Hazards Reduction Program; Advisory Committee on Earthquake Hazards Reduction

AGENCY: National Institute of Standards and Technology, Department of Commerce.

ACTION: Request for nominations of members to serve on the Advisory Committee on Earthquake Hazards Reduction.

SUMMARY: NIST invites and requests nomination of individuals for appointment to the Advisory Committee on Earthquake Hazards Reduction (Committee). This is a new Federal Advisory Committee established pursuant to the National Earthquake Hazards Reduction Program Reauthorization Act. NIST will consider nominations received in response to this notice for appointment to the Committee.

DATES: Please submit nominations on or before August 24, 2006.

ADDRESSES: Please submit nominations to Tina Faecke, Administrative Officer, National Earthquake Hazards Reduction Program, National Institute of Standards and Technology, 100 Bureau Drive, Mail Stop 8630, Gaithersburg, MD 20899–8630. Nominations may also be submitted via fax to 301–975–5433 or e-mail at *tina.faecke@nist.gov.*

Additional information regarding the Committee, including its charter and executive summary may be found on its electronic home page at: *http://www.nehrp.gov.*

FOR FURTHER INFORMATION CONTACT: Dr. Jack Hayes, Director, National Earthquake Hazards Reduction Program, National Institute of Standards and Technology, 100 Bureau Drive, Mail Stop 8601, Gaithersburg, MD 20899–8601, telephone 301–975–5640, fax 301–869–6275; or via e-mail at *jack.hayes@nist.gov.*

SUPPLEMENTARY INFORMATION:

Committee Information

The Committee was established by the Department of Commerce in accordance with the National Earthquake Hazards Reduction Program Reauthorization Act, Public Law 108–360 and the Federal Advisory Committee Act (5 U.S.C. app. 2) on June 27, 2006.

Objectives and Duties

1. The Committee will assess trends and developments in the science and engineering of earthquake hazards reduction, effectiveness of the Program in carrying out the activities under section 103(a)(2) of the Act, the need to revise the Program, the management, coordination, implementation, and activities of the Program.

2. The Committee functions solely as an advisory body, in accordance with the provisions of the Federal Advisory Committee Act.

3. The Committee shall report to the Director of NIST.

4. Not later than one year after the first meeting of the Committee, and at least once every two years thereafter, the Committee shall report to the Director of NIST, on its findings of the assessments and its recommendations for ways to improve the Program. In developing recommendations, the Committee shall consider the recommendations of the United States Geological Survey Scientific Earthquake Studies Advisory Committee.

Membership

1. The Committee will consist of not fewer than 11 members, nor more than 15 members, who reflect a wide diversity of technical disciplines, competencies, and communities involved in earthquake hazards reduction. Members shall be selected on the basis of established records of distinguished service in their professional community and their knowledge of issues affecting the National Earthquake Hazards Reduction Program.

2. The Director of NIST shall appoint the members of the Committee, and they will be selected on a clear, standardized basis, in accordance with applicable Department of Commerce guidance.

3. No committee member may be an ''employee'' as defined in subparagraphs (A) through (F) of section 7342(a)(1) of title 5 of the United States Code.

Miscellaneous

1. Members of the Committee will not be paid for their services, but will, upon request, be allowed travel and per diem expenses in accordance with 5 U.S.C. 5701 *et seq.*, while attending meetings of the Committee or of its subcommittees, or while otherwise performing duties at the request of the chairperson, while away from their homes or a regular place of business.

2. Members of the Committee shall serve as Special Government Employees and are required to file an annual Executive Branch Confidential Financial Disclosure Report.

3. The Committee shall meet at least once per year. Additional meetings may be called whenever the Director of NIST requests a meeting.

Nomination Information

1. Nominations are sought from industry and other communities having an interest in the National Earthquake Hazards Reduction Program, such as, but not limited to, research and academic institutions, industry standards development organizations, state and local government bodies, and financial communities, who are qualified to provide advice on earthquake hazards reduction and represent all related scientific, architectural, and engineering disciplines

2. Nominees should have established records of distinguished service. The field of expertise that the candidate represents should be specified in the nomination letter. Nominations for a particular field should come from organizations or individuals within that field. A summary of the candidate's qualifications should be included with the nomination, including (where applicable) current or former service on federal advisory boards and federal employment. In addition, each nomination letter should state that the person agrees to the nomination, acknowledges the responsibilities of serving on the Committee, and will actively participate in good faith in the tasks of the Committee.

3. The Department of Commerce is committed to equal opportunity in the workplace and seeks a broad-based and diverse Committee membership.

Dated: July 18, 2006.

James E. Hill,

Acting Deputy Director.

[FR Doc. E6–11830 Filed 7–24–06; 8:45 am]

BILLING CODE 3510–13–P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

Evaluation of State Coastal Management Programs and National Estuarine Research Reserves

AGENCY: National Oceanic and Atmospheric Administration (NOAA), Office of Ocean and Coastal Resource Management, National Ocean Service, Commerce.

ACTION: Notice of intent to evaluate—rescheduled public meeting.

SUMMARY: The NOAA Office of Ocean and Coastal Resource Management (OCRM) announces a revised time for a public meeting previously included in an announcement of intent to evaluate the performance of the New Hampshire Coastal Management Program. Notice was previously given in the **Federal Register** on June 29, 2006, of the date of the site visit for the evaluation of the New Hampshire Coastal Management Program and the date, local time, and location of the public meeting. Notice is hereby given of the revised local time of the public meeting during the site visit.

Date and Time: The New Hampshire Coastal Management Program evaluation site visit will be held September 20–22, 2006. One public meeting will be held during the week. The public meeting will be held on Wednesday, September 20, 2006, at 6 p.m. at the New Hampshire Coastal Program Office, Department of Environmental Services, 50 International Drive, Suite 200, Portsmouth, New Hampshire.

FOR FURTHER INFORMATION CONTACT: Ralph Cantral, Chief, National Policy and Evaluation Division, Office of Ocean and Coastal Resource Management, NOS/NOAA, 1305 East-West Highway, 10th Floor, Silver

Spring, Maryland 20910, (301) 563–7118.

Dated: July 19, 2006.

David M. Kennedy,

Director, Office of Ocean and Coastal Resource Management, National Ocean Service, National Oceanic and Atmospheric Administration.

[FR Doc. E6–11844 Filed 7–24–06; 8:45 am]

BILLING CODE 3510–08–P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

[Docket No. 040112010–4114–02; I.D. 071306B]

Magnuson-Stevens Act Provisions; Fisheries of the Northeastern United States; Northeast Multispecies Fishery; Fishing Year 2006 Georges Bank Cod Hook Sector Operations Plan

AGENCY: National Marine Fisheries Service (NMFS), National Oceanic and Atmospheric Administration (NOAA), Commerce.

ACTION: Notice; approval of operations plan.

SUMMARY: NMFS announces approval of additional provisions of the 2006 Georges Bank (GB) Hook Sector (Sector) Operations Plan, consistent with regulations implementing Amendment 13, as modified by Framework Adjustment 40–B to the Northeast (NE) Multispecies Fishery Management Plan (FMP) for fishing year (FY) 2006. The intent is to allow regulated harvest of groundfish by the GB Cod Hook Sector (Sector), consistent with the objectives of the FMP.

DATES: Effective July 25, 2006 through April 30, 2007.

ADDRESSES: Copies of the Sector Operations Plan and the Supplemental Environmental Assessment (EA) are available upon request from the NE Regional Office at the following mailing address: George H. Darcy, Assistant Regional Administrator for Sustainable Fisheries, NMFS, Northeast Regional Office, 1 Blackburn Drive, Gloucester, MA 01930. These documents may also be requested by calling (978) 281–9135.

FOR FURTHER INFORMATION CONTACT: Mark Grant, Fishery Management Specialist, phone (978) 281–9145, fax (978) 281–9135, e-mail *Mark.Grant@NOAA.gov*.

SUPPLEMENTARY INFORMATION: The final rule implementing Amendment 13 to the FMP (69 FR 22906, April 27, 2004) specified a process for the formation of sectors within the NE multispecies fishery and the allocation of total allowable catch (TAC) for a specific groundfish species, implemented restrictions that apply to all sectors, authorized the Sector, established the GB Cod Hook Sector Area (Sector Area), and specified a formula for the allocation of GB cod TAC to the Sector. Framework Adjustment 40–B (70 FR 31323, June 1, 2005) modified that process by allowing any vessel, regardless of gear used in previous fishing years, to join the Sector. All landings of GB cod by Sector participants, regardless of gear previously used, are used to determine the Sector's GB cod allocation for a particular fishing year.

In accordance with the regulations that specify the process of Sector approval, on March 8, 2006, the Sector submitted to NMFS a final version of its 2006 Operations Plan, Sector Agreement, and a Supplemental EA that analyzes the impacts of the proposed Operations Plan. With three substantive exceptions, the proposed FY 2006 Sector Operations Plan contained the same elements as the approved FY 2005 Sector Operations Plan. These exceptions are proposed exemptions from the differential DAS counting requirements, from the DAS Leasing Program vessel size restrictions, and from the 72–hr observer notification requirement. Rationale by the Sector for these proposed exemptions can be found in the **Federal Register** notice soliciting public comment on the FY 2006 GB Cod Hook Sector Operations Plan and Agreement (71 FR 16122, March 30, 2006).

NMFS previously approved the continuation of all provisions from the FY 2005 Sector Operations Plan for FY 2006 and approved the exemption from the 72–hr observer notification requirement (71 FR 25569, May 1, 2006). Based on public comment, and given the importance of effort control in the NE multispecies fishery, NMFS withheld approval of exemptions from differential DAS counting and DAS Leasing Program vessel size restrictions until the New England Fishery Management Council (Council) had the opportunity to discuss the merit of such exemptions.

At its June 13–15, 2006, meeting, the Council discussed the exemptions from differential DAS counting and the DAS Leasing Program size restrictions and considered the Sector's rationale for these exemptions. Both exemptions were endorsed by the Council, for FY 2006 only, without opposition. After consideration of the proposed Sector Agreement, which contains the Sector Contract and Operations Plan, NMFS has concluded that the Sector Agreement, including the proposed exemptions from differential DAS counting and DAS Leasing Program vessel size restrictions, is consistent with the goals of the FMP and other applicable law and is in compliance with the regulations governing the development and operation of a sector as specified under 50 CFR 648.87. Accordingly, NMFS is granting the Sector exemptions from differential DAS counting and the vessel size restrictions of the DAS Leasing Program.

Revised Letters of Authorization will be issued to members of the Sector that will include the following additional exemptions, conditional upon their compliance with the 2006 Sector Agreement: Differential DAS counting as specified at § 648.82(n)(2)(i), and the vessel size restrictions of the DAS Leasing Program as specified at § 648.82(t)(2)(ix).

Authority: 16 U.S.C. 1801 *et seq.*

Dated: July 19, 2006.

Alan D. Risenhoover,

Acting Director, Office of Sustainable Fisheries, National Marine Fisheries Service.

[FR Doc. 06–6450 Filed 7–20–06; 2:18 pm]

BILLING CODE 3510–22–S

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

[I.D. 071706C]

Taking and Importing Marine Mammals; Taking Marine Mammals Incidental to Coastal Commercial Fireworks Displays at Monterey Bay National Marine Sanctuary, CA

AGENCY: National Marine Fisheries Service (NMFS), National Oceanic and Atmospheric Administration (NOAA), Commerce.

ACTION: Notice; issuance of a letter of authorization.

SUMMARY: In accordance with the Marine Mammal Protection Act (MMPA) and implementing regulations, notification is hereby given that a 1-year letter of authorization (LOA) has been issued to the Monterey Bay National Marine Sanctuary (MBNMS or the Sanctuary) to incidentally take, by Level B Harassment only, California sea lions and Pacific harbor seals incidental to authorizing professional fireworks displays within the Sanctuary in California waters.

DATES: The LOA will be effective from July 4, 2006, through July 3, 2007.

ADDRESSES: The LOA and supporting documentation are available by writing to Michael Payne, Chief, Permits, Conservation, and Education Division, Office of Protected Resources, National Marine Fisheries Service, 1315 East-West Highway, Silver Spring, MD 20910–3225, by telephoning one of the contacts listed here (see **FOR FURTHER INFORMATION CONTACT**), or online at: *http://www.nmfs.noaa.gov/pr/permits/incidental.htm*. Documents cited in this notice may be viewed, by appointment, during regular business hours, at the aforementioned address and at the Southwest Region, NMFS, 501 West Ocean Boulevard, Suite 4200, Long Beach, CA 90802.

FOR FURTHER INFORMATION CONTACT: Jolie Harrison, Office of Protected Resources, NMFS, (301) 713–2289, or Monica DeAngelis, Southwest Regional Office, NMFS, (562) 980–4023.

SUPPLEMENTARY INFORMATION:

Background

Section 101(a)(5)(A) of the MMPA (16 U.S.C. 1361 *et seq.*) directs NMFS to allow, on request, the incidental, but not intentional, taking of small numbers of marine mammals by U.S. citizens who engage in a specified activity (other than commercial fishing) within a specified geographical region if certain findings are made and regulations are issued. Under the MMPA, the term ''taking'' means to harass, hunt, capture, or kill or to attempt to harass, hunt, capture or kill marine mammals.

Authorization may be granted for periods up to 5 years if NMFS finds, after notification and opportunity for public comment, that the taking will have a negligible impact on the species or stock(s) of marine mammals and will not have an unmitigable adverse impact on the availability of the species or stock(s) for subsistence uses. In addition, NMFS must prescribe regulations that include permissible methods of taking and other means affecting the least practicable adverse impact on the species and its habitat and on the availability of the species for subsistence uses, paying particular attention to rookeries, mating grounds, and areas of similar significance. The regulations must include requirements for monitoring and reporting of such taking.

Regulations governing the taking of California sea lions and Pacific harbor seals, by Level B harassment, incidental to the authorization of fireworks displays within the Sanctuary became effective on July 4, 2006 (71 FR 40928, July 19, 2006), and remain in effect until July 3, 2011. For detailed information on this action, please refer to that document. These regulations include mitigation, monitoring, and reporting requirements for the incidental taking of marine mammals during the fireworks displays within the Sanctuary boundaries. This will be the first LOA issued pursuant to these regulations.

Authorization

Accordingly, NMFS has issued an LOA to MBNMS authorizing the Level B harassment of marine mammals incidental to the authorization of fireworks display within the Sanctuary. Issuance of this LOA is based on findings, described in the preamble to the final rule (71 FR 40928, July 19, 2006), that the activities described under this LOA will have no more than a negligible impact on marine mammal stocks and will not have an unmitigable adverse impact on the availability of the affected marine mammal stocks for subsistence uses.

Dated: July 19, 2006.

Donna Wieting,

Deputy Director, Office of Protected Resources, National Marine Fisheries Service.

[FR Doc. E6–11846 Filed 7–24–06; 8:45 am]

BILLING CODE 3510–22–S

DEPARTMENT OF DEFENSE

Office of the Secretary

Defense Science Board

AGENCY: Department of Defense.

ACTION: Notice of advisory committee meeting cancellation.

SUMMARY: The Defense Science Board (DSB) Task Force on VTOL/STOL scheduled for July 20–21, 2006, was canceled.

FOR FURTHER INFORMATION CONTACT: LCDR Clifton Phillips, USN, Defense Science Board, 3140 Defense Pentagon, Room 3C553, Washington, DC 20301–3140, via e-mail at *Clifton.phillips@osd.mil,* or via phone at (703) 571–0083.

C.R. Choate,

Alternate OSD Federal Register Liaison Officer, Department of Defense.

[FR Doc. 06–6437 Filed 7–24–06; 8:45 am]

BILLING CODE 5001–06–M

DEPARTMENT OF EDUCATION

Submission for OMB Review; Comment Request

AGENCY: Department of Education.

SUMMARY: The IC Clearance Official, Regulatory Information Management Services, Office of Management invites comments on the submission for OMB review as required by the Paperwork Reduction Act of 1995.

DATES: Interested persons are invited to submit comments on or before August 24, 2006.

ADDRESSES: Written comments should be addressed to the Office of Information and Regulatory Affairs, Attention: Rachel Potter, Desk Officer, Department of Education, Office of Management and Budget, 725 17th Street, NW., Room 10222, New Executive Office Building, Washington, DC 20503 or faxed to (202) 395–6974.

SUPPLEMENTARY INFORMATION: Section 3506 of the Paperwork Reduction Act of 1995 (44 U.S.C. Chapter 35) requires that the Office of Management and Budget (OMB) provide interested Federal agencies and the public an early opportunity to comment on information collection requests. OMB may amend or waive the requirement for public consultation to the extent that public participation in the approval process would defeat the purpose of the information collection, violate State or Federal law, or substantially interfere with any agency's ability to perform its statutory obligations. The IC Clearance Official, Regulatory Information Management Services, Office of Management, publishes that notice containing proposed information collection requests prior to submission of these requests to OMB. Each proposed information collection, grouped by office, contains the following: (1) Type of review requested, e.g. new, revision, extension, existing or reinstatement; (2) Title; (3) Summary of the collection; (4) Description of the need for, and proposed use of, the information; (5) Respondents and frequency of collection; and (6) Reporting and/or Recordkeeping burden. OMB invites public comment.

Dated: July 19, 2006.

Angela C. Arrington,

IC Clearance Official, Regulatory Information Management Services, Office of Management.

Institute of Education Sciences

Type of Review: Revision.

Title: Early Childhood Longitudinal Study (ECLS)—Kindergarten Cohort, Eighth Grade Followup.

Frequency: One-time.

Affected Public: Individuals or household; Businesses or other for-profit; Not-for-profit institutions; State, Local, or Tribal Gov't, SEAs or LEAs.

Reporting and Recordkeeping Hour Burden: Responses: 29,870.

Burden Hours: 16,576.

Abstract: Starting in the fall and spring of the 1998–99 school year with a cohort of kindergartners, this cohort was contacted again in the fall and in the spring of their first grade year and in their third grade and fifth grade years. This clearance is to conduct a full scale data collection for the eighth grade assessment and background questionnaires.

Requests for copies of the information collection submission for OMB review may be accessed from *http://edicsweb.ed.gov,* by selecting the ''Browse Pending Collections'' link and by clicking on link number 3151. When you access the information collection, click on ''Download Attachments'' to view. Written requests for information should be addressed to U.S. Department of Education, 400 Maryland Avenue, SW., Potomac Center, 9th Floor, Washington, DC 20202–4700. Requests may also be electronically mailed to *ICDocketMgr@ed.gov* or faxed to 202–245–6623. Please specify the complete title of the information collection when making your request.

Comments regarding burden and/or the collection activity requirements should be electronically mailed to *ICDocketMgr@ed.gov.* Individuals who use a telecommunications device for the deaf (TDD) may call the Federal Information Relay Service (FIRS) at 1–800–877–8339.

[FR Doc. E6–11756 Filed 7–24–06; 8:45 am]

BILLING CODE 4000–01–P

DEPARTMENT OF EDUCATION

Notice of Proposed Information Collection Requests

AGENCY: Department of Education

SUMMARY: The IC Clearance Official, Regulatory Information Management Services, Office of Management, invites comments on the proposed information collection requests as required by the Paperwork Reduction Act of 1995.

DATES: Interested persons are invited to submit comments on or before September 25, 2006.

SUPPLEMENTARY INFORMATION: Section 3506 of the Paperwork Reduction Act of 1995 (44 U.S.C. Chapter 35) requires that the Office of Management and Budget (OMB) provide interested Federal agencies and the public an early opportunity to comment on information collection requests. OMB may amend or waive the requirement for public consultation to the extent that public participation in the approval process would defeat the purpose of the information collection, violate State or Federal law, or substantially interfere with any agency's ability to perform its statutory obligations. The IC Clearance Official, Regulatory Information Management Services, Office of Management, publishes that notice containing proposed information collection requests prior to submission of these requests to OMB. Each proposed information collection, grouped by office, contains the following: (1) Type of review requested, e.g. new, revision, extension, existing or reinstatement; (2) Title; (3) Summary of the collection; (4) Description of the need for, and proposed use of, the information; (5) Respondents and frequency of collection; and (6) Reporting and/or Recordkeeping burden. OMB invites public comment.

The Department of Education is especially interested in public comment addressing the following issues: (1) Is this collection necessary to the proper functions of the Department; (2) will this information be processed and used in a timely manner; (3) is the estimate of burden accurate; (4) how might the Department enhance the quality, utility, and clarity of the information to be collected; and (5) how might the Department minimize the burden of this collection on the respondents, including through the use of information technology.

Dated: July 19, 2006.

Angela C. Arrington,

IC Clearance Official, Regulatory Information Management Services, Office of Management.

Federal Student Aid

Type of Review: Extension.

Title: National Student Loan Data System (NSLDS).

Frequency: On occasion; weekly; monthly; quarterly.

Affected Public: Not-for-profit institutions; Businesses or other for-profit; State, Local, or Tribal Gov't, SEAs or LEAs.

Reporting and Recordkeeping Hour Burden: Responses: 34,976 Burden Hours: 134,840.

Abstract: The U.S. Department of Education will collect data from postsecondary schools and guaranty agencies about federal Perkins loans, federal family education loans, and William D. Ford direct student loans to be used to determine eligibility for Title IV student financial aid.

Requests for copies of the proposed information collection request may be accessed from *http://edicsweb.ed.gov*, by selecting the ''Browse Pending Collections'' link and by clicking on link number 3156. When you access the information collection, click on ''Download Attachments'' to view. Written requests for information should be addressed to U.S. Department of Education, 400 Maryland Avenue, SW., Potomac Center, 9th Floor, Washington, DC 20202–4700. Requests may also be electronically mailed to *ICDocketMgr@ed.gov* or faxed to 202–245–6623. Please specify the complete title of the information collection when making your request.

Comments regarding burden and/or the collection activity requirements should be electronically mailed to *ICDocketMgr@ed.gov.* Individuals who use a telecommunications device for the deaf (TDD) may call the Federal Information Relay Service (FIRS) at 1–800–877–8339.

[FR Doc. E6–11757 Filed 7–24–06; 8:45 am]

BILLING CODE 4000–01–P

ENVIRONMENTAL PROTECTION AGENCY

[FRL–8203–3]

Office of Research and Development; Ambient Air Monitoring Reference and Equivalent Methods: Designation of Two New Reference Methods

AGENCY: Environmental Protection Agency.

ACTION: Notice of the designation of two new reference methods for monitoring ambient air quality.

SUMMARY: Notice is hereby given that the Environmental Protection Agency (EPA) has designated, in accordance with 40 CFR part 53, two new reference methods, one each for measuring concentrations of particulate matter as PM_{10} and nitrogen dioxide (NO_2) in the ambient air.

FOR FURTHER INFORMATION CONTACT: Elizabeth Hunike, Human Exposure and Atmospheric Sciences Division (MD–D205–03), National Exposure Research Laboratory, U.S. EPA, Research Triangle Park, North Carolina 27711. Phone: (919) 541–3737, e-mail: *Hunike.Elizabeth@epa.gov.*

SUPPLEMENTARY INFORMATION: In accordance with regulations at 40 CFR Part 53, the EPA evaluates various methods for monitoring the concentrations of those ambient air pollutants for which EPA has established National Ambient Air Quality Standards (NAAQSs) as set forth in 40 CFR part 50. Monitoring methods that are determined to meet specific requirements for adequacy are designated by the EPA as either reference methods or equivalent methods (as applicable), thereby

permitting their use under 40 CFR part 58 by States and other agencies for determining attainment of the NAAQSs.

The EPA hereby announces the designation of two new reference methods for measuring concentrations of PM_{10} and NO_2 in the ambient air. These designations are made under the provisions of 40 CFR part 53, as amended on July 18, 1997 (62 FR 38764).

The new reference method for PM_{10} is a manual method that is based on a particular, commercially available high volume PM_{10} sampler, as specified in appendix J of 40 CFR part 50. The newly designated reference method is identified as follows: RFPS–0706–162, Ecotech Pty. Ltd. Model 3000 PM_{10} High Volume Air Sampler, configured with the Ecotech PM_{10} Size-Selective Inlet (SSI) (P–ECO–HVS3000–02), with the flow rate set to 1.13 m^3/min (67.8 m^3/hour).

An application for a reference method determination for the method based on this Ecotech sampler was received by the EPA on November 29, 2005. The sampler is available commercially from the applicant, Ecotech Pty. Ltd., 12 Apollo Court, Blackburn, Victoria 3130, Australia.

The new reference method for NO_2 is an automated method (analyzer) that utilizes the measurement principle (gas phase chemiluminescence) and calibration procedure specified in appendix F of 40 CFR part 50. This newly designated NO_2 reference method is identified as follows: RFNA–0706–0163, ''Seres Model NO_X 2000 G Nitrogen Dioxide Ambient Air Analyzer'' operated with a full scale measurement range of 0–0.50 ppm, at any ambient temperature in the range of 20 °C to 30 °C.

An application for a reference method determination for the Seres Model NO_X 2000 G was received by the EPA on January 19, 2006. The analyzer is available commercially from the applicant, Seres, 360, Rue Louis de Broglie, La Duranne BP 87000, 13793 Aix en Provence, Cedex 3, France (*http://www.seres-france.com*).

Samplers or a test analyzer representative of each of these methods have been tested in accordance with the applicable test procedures specified in 40 CFR part 53 (as amended on July 18, 1997). After reviewing the results of those tests and other information submitted by the applicants in the respective applications, EPA has determined, in accordance with part 53, that each of these methods should be designated as a reference method. The information submitted by the applicants in their respective applications will be kept on file, either at EPA's National Exposure Research Laboratory, Research Triangle Park, North Carolina 27711 or in an approved archive storage facility, and will be available for inspection (with advance notice) to the extent consistent with 40 CFR part 2 (EPA's regulations implementing the Freedom of Information Act).

As a designated reference or equivalent method, each of these methods is acceptable for use by states and other air monitoring agencies under the requirements of 40 CFR part 58, Ambient Air Quality Surveillance. For such purposes, the method must be used in strict accordance with the operation or instruction manual associated with the method and subject to any specifications and limitations (e.g., configuration or operational settings) specified in the applicable designation method description (see the identifications of the methods above).

Use of each method should also be in general accordance with the guidance and recommendations of applicable sections of the ''Quality Assurance Handbook for Air Pollution Measurement Systems, Volume I,'' EPA/600/R–94/038a and ''Quality Assurance Handbook for Air Pollution Measurement Systems, Volume II, part 1,'' EPA–454/R–98–004 (available at *http://www.epa.gov/ttn/amtic/qabook.html*). Vendor modifications of a designated reference or equivalent method used for purposes of Part 58 are permitted only with prior approval of the EPA, as provided in Part 53. Provisions concerning modification of such methods by users are specified under section 2.8 (Modifications of Methods by Users) of Appendix C to 40 CFR part 58.

In general, a method designation applies to any sampler or analyzer which is identical to the sampler or analyzer described in the application for designation. In some cases, similar samplers or analyzers manufactured prior to the designation may be upgraded or converted (*e.g.*, by minor modification or by substitution of the approved operation or instruction manual) so as to be identical to the designated method and thus achieve designated status. The manufacturer should be consulted to determine the feasibility of such upgrading or conversion.

Part 53 requires that sellers of designated reference or equivalent method analyzers or samplers comply with certain conditions. These conditions are specified in 40 CFR 53.9 and are summarized below:

(a) A copy of the approved operation or instruction manual must accompany the sampler or analyzer when it is delivered to the ultimate purchaser.

(b) The sampler or analyzer must not generate any unreasonable hazard to operators or to the environment.

(c) The sampler or analyzer must function within the limits of the applicable performance specifications given in 40 CFR parts 50 and 53 for at least one year after delivery when maintained and operated in accordance with the operation or instruction manual.

(d) Any sampler or analyzer offered for sale as part of a reference or equivalent method must bear a label or sticker indicating that it has been designated as part of a reference or equivalent method in accordance with part 53 and showing its designated method identification number.

(e) If such an analyzer has two or more selectable ranges, the label or sticker must be placed in close proximity to the range selector and indicate which range or ranges have been included in the reference or equivalent method designation.

(f) An applicant who offers samplers or analyzers for sale as part of a reference or equivalent method is required to maintain a list of ultimate purchasers of such samplers or analyzers and to notify them within 30 days if a reference or equivalent method designation applicable to the method has been canceled or if adjustment of the sampler or analyzer is necessary under 40 CFR 53.11(b) to avoid a cancellation.

(g) An applicant who modifies a sampler or analyzer previously designated as part of a reference or equivalent method is not permitted to sell the sampler or analyzer (as modified) as part of a reference or equivalent method (although it may be sold without such representation), nor to attach a designation label or sticker to the sampler or analyzer (as modified) under the provisions described above, until the applicant has received notice under 40 CFR 53.14(c) that the original designation or a new designation applies to the method as modified, or until the applicant has applied for and received notice under 40 CFR 53.8(b) of a new reference or equivalent method determination for the sampler or analyzer as modified.

Aside from occasional breakdowns or malfunctions, consistent or repeated noncompliance with any of these conditions should be reported to: Director, Human Exposure and Atmospheric Sciences Division (MD–E205–01), National Exposure Research Laboratory, U.S. Environmental

Protection Agency, Research Triangle Park, North Carolina 27711.

Designation of these new reference and equivalent methods is intended to assist the States in establishing and operating their air quality surveillance systems under 40 CFR 58. Questions concerning the commercial availability or technical aspects of the method should be directed to the applicant.

Jewel F. Morris,

Acting Director, National Exposure Research Laboratory.

[FR Doc. E6–11820 Filed 7–24–06; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

[FRL–8203–2]

Proposed Agreement for Settlement of Response Costs, Site Access, Institutionial Controls and Conditional Convenant Not To Sue for the Superior Waste Rock Superfund Site, Mineral County, MT

Environmental Protection Agency.

ACTION: Notice of proposed agreement; request for public comment.

SUMMARY: In accordance with the requirements of section 122(h)(1) of the Comprehensive Environmental Response Compensation, and Liability Act of 1980, as amended (''CERCLA''), 42 U.S.C. 9622(h)(1), notice is hereby given of the proposed administrative settlement under section 122(h) of CERCLA, 42 U.S.C. 9622(h) between the U.S. Environmental Protection Agency (''EPA'') and Mineral County Montana; the Town of Superior, Montana; and the Superior School District, Montana (collectively, ''Settling Parties''). The Settling Parties will consent to and will not contest the authority of the United States to enter into this Agreement or to implement or enforce its terms. In return, the Settling Parties receive a Covenant Not to Sue from EPA. The EPA has incurred response costs totaling approximately $1,109,446.43 through February 28, 2006, and any additional Response Costs through the present date. EPA alleges that Settling Parties are Potentially Responsible Parties pursuant to Section 107(a) of CERCLA, 42 U.S.C. 9607(a), and are jointly and severally liable for Response Costs incurred and to be incurred at or in connection with the Site. EPA has reviewed the financial information submitted by Settling Parties and based upon this information, EPA has determined that none of the three Settling Parties has the financial ability to pay for Response Costs incurred and to be incurred at the Site. The Settling Parties agree to provide EPA access at all reasonable times to the Site and to any other property owned or controlled by the Settling Parties for the purpose of conducting any response activity related to the Site. The Settling Parties shall refrain from using the Site, or such other property, in any manner that would interfere with or adversely affect the implementation, integrity, ongoing operations and maintenance of the containment cell or protectiveness of the Site response. Such restrictions are defined as Institutional Controls, and are part of the subject Agreement. The Settling Parties agree to fulfill all Notice and Recording requirements associated with the terms of the subject Agreement.

The Settling Parties have executed and recorded certain Institutional Controls in the Office of the Clerk and Recorder of Mineral County, Montana and provided EPA with a certified copy of the original recorded Institutional Controls, showing the clerk's recording stamps. Notwithstanding any provision of this Agreement, EPA retains all of its access authorities and rights, including enforcement authorities related thereto, under CERCLA, the Resource Conservation and Recovery Act (RCRA), and any other applicable statutes or regulations. EPA's covenant not to sue is conditioned upon the satisfactory performance by the Settling Parties of their obligations under this Agreement. This covenant not to sue is also conditioned upon the veracity and completeness of the Financial Information provided to EPA by the Settling Parties. The Settling Parties recognize that this Agreement has been negotiated in good faith and that this Agreement is entered into without the admission or adjudication of any issue of fact or law.

DATES: Comments concerning this Agreement are due by August 24, 2006. The Agency will consider all comments received and may modify or withdraw its consent to the Agreement if comments received disclose facts or considerations that indicate that the Agreement is inappropriate, improper, or inadequate.

ADDRESSES: The Agency will place its response to any comments received as a result of this Notice, the proposed Agreement and additional background information relating to the Agreement in the Superfund Records Center where documents are available for public inspection. The EPA Superfund Record Center is located at 999 18th Street, Suite 300, 5th Floor, in Denver, Colorado. Comments and requests for a copy of the proposed Agreement should be addressed to Maureen O'Reilly, Enforcement Specialist, Environmental Protection Agency—Region 8, Mail Code 8ENF–RC, 999 18th Street, Suite 300, Denver, Colorado 80202–2466, and should reference the Superior Waste Rock Superfund Site, SSID# 08ER, Mineral County, Montana.

FOR FURTHER INFORMATION CONTACT: Steven Moores, Enforcement Attorney, Legal Enforcement Program, Environmental Protection Agency—Region 8, Mail Code 8ENF–L, 999 18th Street, Suite 300, Denver, Colorado 80202–2466, (303) 312–6857.

Dated: July 12, 2006.

Carol Rushin,

Assistant Regional Administrator, Office of Enforcement, Compliance and Environmental Justice, Region VIII.

[FR Doc. E6–11822 Filed 7–24–06; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

[FRL–8203–4]

Extension of Public Comment Period for the Proposed Reissuance of General NPDES Permits (GPs) for Aquaculture Facilities in Idaho Subject to Wasteload Allocations Under Selected Total Maximum Daily Loads (Permit Number IDG–13–0000), Cold Water Aquaculture Facilities in Idaho (Not Subject to Wasteload Allocations) (Permit Number IDG–13–1000), and Fish Processors Associated With Aquaculture Facilities in Idaho (Permit Number IDG–13–2000)

AGENCY: Environmental Protection Agency.

ACTION: Extension of Public Comment Period on three draft general NPDES permits for Idaho aquaculture facilities and associated fish processors.

SUMMARY: On June 19, 2006, EPA Region 10 proposed to reissue three general permits to cover aquaculture facilities and associated fish processors in Idaho. 71 FR 35269. In response to requests from the regulated community, EPA is extending the public comment period from August 3 to August 18, 2006.

DATES: The end of the public comment period is now extended to August 18, 2006. Comments must be received or postmarked by that date.

Public Comment: Interested persons may submit written comments on the draft permits to the attention of Sharon Wilson at the address below. All comments should include the name,

address, and telephone number of the commenter and a concise statement of comment and the relevant facts upon which it is based. Comments of either support or concern which are directed at specific, cited permit requirements are appreciated.

After the expiration date of the Public Notice on August 18, 2006; the Director, Office of Water and Watersheds, EPA Region 10, will make a final determination with respect to issuance of the general permits. The proposed requirements contained in the draft general permits will become final upon issuance if no significant comments are received during the public comment period.

ADDRESSES: Comments on the proposed General Permits should be sent to Sharon Wilson, Office of Water and Watersheds; USEPA Region 10; 1200 Sixth Avenue, OWW–130; Seattle, Washington 98101 or by e-mail to *wilson.sharon@epa.gov.*

FOR FURTHER INFORMATION, CONTACT: Carla Fromm, 208–378–5755, *fromm.carla@epa.gov* or Sharon Wilson, 206–553–0325, *wilson.sharon@epa.gov* Copies of the draft general permit and fact sheet may be downloaded from the EPA Region 10 web site at . They are also available upon request from Audrey Washington at (206) 553–0523, or e-mailed to *washington.audrey@epa.gov.* For information on physical locations in Idaho and Seattle where the documents may be viewed, see the June 19, 2006, notice at 71 FR 35269.

Dated: July 17, 2006.

Christine Psyk,

Associate Director, Office of Water & Watersheds, Region 10, U.S. Environmental Protection Agency.

[FR Doc. E6–11815 Filed 7–24–06; 8:45 am]

BILLING CODE 6560–50–P

EXPORT-IMPORT BANK OF THE UNITED STATES

Economic Impact Policy

This notice is to inform the public that the Export-Import Bank of the United States has received an application to finance the export of approximately $480 million in U.S. equipment and services to a petrochemicals facility in Saudi Arabia. The U.S. exports will enable the petrochemicals facility to produce approximately 1.1 million metric tons of high-density polyethylene, 400 thousand metric tons of polypropylene, 200 thousand metric tons of polystyrene and 100 thousand metric tons of hexene-1. Initial production at this facility is expected to commence in 2011.

Available information indicates the following: The high-density polyethylene will be consumed in Asia, Europe, Africa and the Middle East; the polypropylene will be consumed in Asia, Western Europe and the Middle East; the polystyrene will be consumed in China, Africa, Europe and the Middle East; and the hexene-1 will be consumed in Saudi Arabia. Interested parties may submit comments on this transaction by e-mail to *economic.impact@exim.gov* or by mail to 811 Vermont Avenue, NW., Room 1238, Washington, DC 20571, within 14 days of the date this notice appears in the **Federal Register**.

Helene S. Walsh,

Director, Policy Oversight and Review.

[FR Doc. E6–11759 Filed 7–24–06; 8:45 am]

BILLING CODE 6690–01–P

FEDERAL RESERVE SYSTEM

Formations of, Acquisitions by, and Mergers of Bank Holding Companies

The companies listed in this notice have applied to the Board for approval, pursuant to the Bank Holding Company Act of 1956 (12 U.S.C. 1841 *et seq.*) (BHC Act), Regulation Y (12 CFR Part 225), and all other applicable statutes and regulations to become a bank holding company and/or to acquire the assets or the ownership of, control of, or the power to vote shares of a bank or bank holding company and all of the banks and nonbanking companies owned by the bank holding company, including the companies listed below.

The applications listed below, as well as other related filings required by the Board, are available for immediate inspection at the Federal Reserve Bank indicated. The application also will be available for inspection at the offices of the Board of Governors. Interested persons may express their views in writing on the standards enumerated in the BHC Act (12 U.S.C. 1842(c)). If the proposal also involves the acquisition of a nonbanking company, the review also includes whether the acquisition of the nonbanking company complies with the standards in section 4 of the BHC Act (12 U.S.C. 1843). Unless otherwise noted, nonbanking activities will be conducted throughout the United States. Additional information on all bank holding companies may be obtained from the National Information Center website at *www.ffiec.gov/nic/*.

Unless otherwise noted, comments regarding each of these applications must be received at the Reserve Bank indicated or the offices of the Board of Governors not later than August 19, 2006.

A. Federal Reserve Bank of Boston (Richard Walker, Community Affairs Officer) P.O. Box 55882, Boston, Massachusetts 02106-2204:

1. Passumpsic Bancorp, Saint Johnsbury, Vermont; to acquire 100 percent of the voting shares of, and merge with The Siwooganock Holding Company, Inc., and thereby indirectly acquire voting shares of The Siwooganock Bank, both of Lancaster, New Hampshire, and retain 10 percent of the voting shares of Lancaster National Bank, Lancaster, New Hampshire.

Board of Governors of the Federal Reserve System, July 20, 2006.

Robert deV. Frierson,

Deputy Secretary of the Board.

[FR Doc. E6–11818 Filed 7–24–06; 8:45 am]

BILLING CODE 6210–01–S

FEDERAL RESERVE SYSTEM

Notice of Proposals to Engage in Permissible Nonbanking Activities or to Acquire Companies that are Engaged in Permissible Nonbanking Activities

The companies listed in this notice have given notice under section 4 of the Bank Holding Company Act (12 U.S.C. 1843) (BHC Act) and Regulation Y (12 CFR Part 225) to engage *de novo*, or to acquire or control voting securities or assets of a company, including the companies listed below, that engages either directly or through a subsidiary or other company, in a nonbanking activity that is listed in § 225.28 of Regulation Y (12 CFR 225.28) or that the Board has determined by Order to be closely related to banking and permissible for bank holding companies. Unless otherwise noted, these activities will be conducted throughout the United States.

Each notice is available for inspection at the Federal Reserve Bank indicated. The notice also will be available for inspection at the offices of the Board of Governors. Interested persons may express their views in writing on the question whether the proposal complies with the standards of section 4 of the BHC Act. Additional information on all bank holding companies may be obtained from the National Information Center website at *www.ffiec.gov/nic/*.

Unless otherwise noted, comments regarding the applications must be received at the Reserve Bank indicated or the offices of the Board of Governors not later than August 19, 2006.

A. Federal Reserve Bank of Atlanta (Andre Anderson, Vice President) 1000 Peachtree Street, N.E., Atlanta, Georgia 30309:

1. Southeastern Bank Financial Corporation, Augusta, Georgia; to acquire Southern Bank and Trust, Aiken, South Carolina, and thereby engage *de novo* in operating a savings association, pursuant to section 225.28(b)(4)(ii) of Regulation Y.

Board of Governors of the Federal Reserve System, July 20, 2006.

Robert deV. Frierson,

Deputy Secretary of the Board.

[FR Doc. E6–11819 Filed 7–24–06; 8:45 am]

BILLING CODE 6210–01–S

FEDERAL RESERVE SYSTEM

[Docket No. OP–1260]

Federal Reserve Payment System Risk Policy: Modified Procedures for Measuring Daylight Overdrafts

AGENCY: Board of Governors of the Federal Reserve System.

ACTION: Policy Statement.

SUMMARY: The Board of Governors of the Federal Reserve System (Board) has adopted changes to its Policy on Payments System Risk affecting the procedures for measuring daylight overdrafts. Funds transfers that the Reserve Banks function for certain international organizations using systems other than their payments processing systems will be posted throughout the business day, which is the same treatment as for Fedwire funds transfers.

DATES: *Effective Date:* July 20, 2006.

FOR FURTHER INFORMATION CONTACT: Lisa Hoskins, Assistant Director (202–452–3437) or Susan Foley, Manager (202–452–3596), Division of Reserve Bank Operations and Payment Systems, Board of Governors of the Federal Reserve System; for users of Telecommunications Device for the Deaf (''TDD'') only, contact (202) 263–4869.

SUPPLEMENTARY INFORMATION:

I. Background

The Board's Payment System Risk Policy establishes maximum limits (net debit caps) and fees on daylight overdrafts in depository institutions' accounts at Reserve Banks. When the Board adopted daylight overdraft fees, the Reserve Banks began measuring depository institutions' intraday account balances according to a set of ''posting rules'' established by the Board. These rules comprise a schedule for the posting of debits and credits to institutions' Federal Reserve accounts for different types of payments.[1] The Board's objectives in designing the posting rules include minimizing intraday float, facilitating depository institutions' monitoring and control of their cash balances during the day, and reflecting the legal rights and obligations of parties to payments.

Under these posting rules, certain transactions, including Fedwire funds transfers, Fedwire book-entry securities transfers, and National Settlement Service transactions, are posted as they are processed during the business day. The posting rules do not currently address instances when the Reserve Banks, acting as fiscal agents for certain international organizations, process funds transfers using internal systems other than their payments processing systems, such as Fedwire, to function payments in these institutions' accounts. The legal rights and obligations of the parties to these payments enable the Reserve Banks to treat these funds transfers as final once the accounting entries are made in internal systems. The Board believes that these funds transfers should be treated consistent with Fedwire funds transfers, which are posted throughout the business day, for daylight overdraft measurement purposes. A footnote has been added to the posting rules under Fedwire funds transfers to clarify this treatment of funds transfers processed on internal systems by the Federal Reserve Banks for certain international organizations.

II. Paperwork Reduction Act

In accordance with the Paperwork Reduction Act of 1995 (44 U.S.C. ch. 3506; 5 CFR Part 1320, Appendix A.1), the Board has reviewed the policy statement under the authority delegated to the Board by the Office of Management and Budget. No collections of information pursuant to the Paperwork Reduction Act are contained in the policy statement.

Policy on Payments System Risk

In the Federal Reserve Policy on Payments System Risk, section II.A., under heading ''Procedures for Measuring Daylight Overdrafts'' and sub heading ''Post Throughout Business Day'', a new footnote under Fedwire funds transfers will be added. The new footnote will read

[25] Funds transfers that the Reserve Banks function for certain international organizations using internal systems other than payment processing systems such as Fedwire will be posted throughout the business day for purposes of measuring daylight overdrafts.

All subsequent footnotes will be renumbered to accommodate the addition of footnote number 25.

By order of the Board of Governors of the Federal Reserve System, acting through the Director of the Division of Reserve Bank Operations and Payment Systems under delegated authority, July 19, 2006.

Robert deV. Frierson,

Deputy Secretary of the Board.

[FR Doc. E6–11765 Filed 7–24–06; 8:45 am]

BILLING CODE 6210–01–P

[1] See ''Federal Reserve Policy Statement on Payments System Risk,'' section I.A (57 FR 47093, October 14, 1992).

GENERAL SERVICES ADMINISTRATION

[OMB Control No. 3090–0270]

Federal Acquisition Service; Information Collection; Access Certificates for Electronic Services (ACES)

AGENCY: Office of the Commissioner, GSA.

ACTION: Notice of request for comments regarding a renewal to an existing OMB clearance.

SUMMARY: Under the provisions of the Paperwork Reduction Act of 1995 (44 U.S.C. Chapter 35), the General Services Administration will be submitting to the Office of Management and Budget (OMB) a request to review and approve a renewal of a currently approved information collection requirement regarding Access Certificates for Electronic Services (ACES). The clearance currently expires on October 31, 2006.

The ACES Program is designed to facilitate and promote secure electronic communications between online automated information technology application systems authorized by law to participate in the ACES Program and users who elect to participate in the program, through the implementation and operation of digital signature certificate technologies. Individual digital signature certificates are issued to individuals based upon their presentation of verifiable proof of identity in an authorized ACES Registration Authority. Business Representative digital signature certificates are issued to individuals based upon their presentation of verifiable proof of identity and verifiable proof of authority from the claimed entity to an authorized ACES Registration Authority.

Public comments are particularly invited on: Whether this collection of

information is necessary and whether it will have practical utility; whether our estimate of the public burden of this collection of information is accurate and based on valid assumptions and methodology; and ways to enhance the quality, utility, and clarity of the information to be collected.

DATES: Submit comments on or before: September 25, 2006.

FOR FURTHER INFORMATION CONTACT: Stephen Duncan, Federal Acquisition Service, at telephone (703) 872–8537 or via e-mail to *stephen.duncan@gsa.gov*.

ADDRESSES: Submit comments regarding this burden estimate or any other aspect of this collection of information, including suggestions for reducing this burden to the Regulatory Secretariat (VIR), General Services Administration, Room 4035, 1800 F Street, NW., Washington, DC 20405. Please cite OMB Control No. 3090–0270, Access Certificates for Electronic Services (ACES), in all correspondence.

SUPPLEMENTARY INFORMATION:

A. Background

One of the primary goals of the emerging Government Services Information Infrastructure (GSII) is to facilitate public access to government information and services through the use of information technologies. One of the specific goals of the GSII is to provide the public with a choice of using Internet-based, online access to the automated information technology application systems operated by government agencies; such access will make it easier and less costly for the public to complete transactions with the government. By law, access to some of these automated information technology application systems can be granted only after the agency operating the system is provided with reliable information that the individual requesting such access is who he/she claims to be, and that he/she is authorized such access. The arms-length transactions envisioned by the GSII require implementation of methods for:

1. Reliably establishing and verifying the identity of the individuals desiring to participate in the ACES Program, based primarily upon electronic communications between the applicant and authorized ACES Registration Authority.

2. Issuing to the individuals who have been successfully identified a means that they can use to uniquely identify themselves to the automated information technology application systems participating in the ACES Program.

3. Electronically and securely passing that identity to the automated information technology application system to which the individual is requesting access.

4. Electronically and securely authenticating that identity, through a trusted third party, each time it is presented to an automated information technology application system participating in the ACES Program.

5. Ensuring that the identified individual requesting access to an automated information technology application system has been duly authorized, by the management of that automated information technology application system, to access that system and perform the transactions desired.

6. Ensuring that the information being exchanged between the individual and the automated information technology application system has not been corrupted during transmission.

7. Reducing the ability of the parties to such transactions to repudiate the actions taken.

The current state-of-the-art suggests that digital signature certificate technologies (often referred to as part of ''Public Key Infrastructure, or PKI'') provide a reliable and cost efficient means for meeting many of these GSII requirements. Thus, the ACES Program should be understood to represent an effort to implement and continue a PKI through which members of the public who desire to do so can securely communicate electronically with the online automated information technology application systems participating in the ACES Program.

The initial step for any member of the public to take in order to participate in the ACES Program is to submit an application for an ACES certificate to an authorized ACES Registration Authority. In conjunction with application process, the applicant will be required to submit at least:

a. His/her full name.

b. His/her place of birth.

c. His/her date of birth.

d. His/her current address and telephone number.

e. At least three(3) of the following:

i. Current valid state issued driver license number or number of state issued identification card.

ii. Current valid passport number.

iii. Current valid credit card number.

iv. Alien registration number (if applicable).

v. Social Security Number.

vi. Current employer name, address, and telephone number.

f. If the registration is for a business representative certificate, evidence of authorization to represent that business entity.

The information provided during the process of applying for an ACES certificate constitutes the continued information collection activity that is the subject of this Paperwork Reduction Act Notice and request for comments.

B. Description

A detailed description of the current ACES Program is available on the World Wide Web at *http://www.gsa.gov/aces*, or through the ''FOR FURTHER INFORMATION CONTACT '' listed above.

Please note that all ACES identity information collected from the public is covered by the Privacy Act, the Computer Security Act, and related privacy and security regulations, regardless of whether it is provided directly to an agency of the Federal Government or to an authorized ACES Registration Authority providing ACES-related services under a contract with GSA. Compliance with all of the attending requirements is enforced through binding contracts, periodic monitoring by GSA, annual audits by independent auditing firms, and tri-annual re-accreditation by GSA. Only fully accredited Registration Authorities will be permitted to accept and maintain identity information provided by the public.

The identity information collected will be used only to establish and verify the identity and eligibility of applicants for ACES certificates; no other use of the information is permitted.

Participation in the ACES Program is strictly voluntary, but participation will only be permitted upon presentation of identity information by the applicant, and verification of that information by an authorized ACES Registration Authority.

ACES is designed to permit on-line, arms-length registration through the Internet, which significantly reduces the public's reporting burden. Based upon preliminary tests run on similar systems for gathering identity-related information from the public (*e.g.*, U.S. Passports, initial issuance of state-issued driver's license, etc.), the individual reporting burden for providing identity information for the initial ACES certificate is estimated at an average of 15 minutes, including gathering the information together and entering the data into the electronic forms provided by the authorized ACES Registration Authorities.

Service providers participating in the ACES Program may choose to participate in the E-Authentication Services Component (ASC) as a

Credential Service Provider (CSP). As a result and to support the technical requirements of the ASC CSP's may supply attribute information in Security Assertion Markup Language (SAML) Assertions between the CSP and the Agency e-government application. This applies to SAML based use cases only.

The E-Authentication Service Component leverages credentials from multiple credential providers through certifications, guidelines, standards and policies. The E-Authentication Service Component accommodates assertion based authentication (*i.e.*, authentication of PIN and Password credentials) and certificate-based authentication (*i.e.*, Public Key Infrastructure (PKI) digital certificates, and other forms of strong authentication) within the same environment. The E-Authentication Service Component is aligned with OMB Policy Memorandum M–04–04, EAuthentication Guidance for Federal Agencies (*http://www.whitehouse.gov/omb/memoranda/fy04/m04–04.pdf*), which provides policy guidance for identity authentication and establishes four levels of authentication assurance. It is also aligned with National Institute for Standards and Technology (NIST) Special Publication 800–63, Recommendation for Electronic Authentication *http://csrc.nist.gov/publications/nistpubs/800–63/SP800–63V1__0__2.pdf*. This document accompanies and supports OMB M–04–04 and provides technical and procedural requirements for authentication systems which correlate to the four defined authentication assurance levels defined in OMB M–04–04. The E-Authentication Service Component provides the infrastructure for Federal agencies to implement the policies and recommendations of OMB M–04–04 and NIST SP 800–63. These documents as well as other technical, policy, and informational documents and materials can be accessed at the website: *http://www.cio.gov/eauthentication*.

The Interface Specifications require the following information to be contained in the SAML assertion between the Credential Service Provider and an e-Government Agency Application (AA) which is the relying party to the identity assertion:

Common Name: expressed as First Name, Middle Name, Last Name, suffix surname;

User ID: provided by the CSP so that no two subscribers within a credential service can share the same User ID;

Authentication Assurance Level: *i.e.*, assurance level 1, 2, 3, or 4; and

CSP: CSP is identified in the assertion.

Since the SAML assertion contains only common name and user ID of the end user for the selected CSP, most agencies have determined that a separate activation process is necessary to identify the specific individual as represented in the AA. This generally requires creating a separate query process to identify the end user to the AA. To facilitate the activation process and avoid requiring the end user to reenter the same identifying information multiple times, GSA is also proposing to add the following attribute information to the SAML 1.0 Interface Specifications as optional information:

Partial Social Security Number (SSN): the last four digits of the end users' SSN;

Date of Birth (DOB): MM/DD/YYYY; and

Physical Address: street address, city, state, and zip code.

The end user name, partial SSN, physical address and DOB are intended to allow the AA to identify the correct end user during the activation process, without necessarily requiring the AA to query the end user for any additional information. AAs will match the last four digits of the identity information in the SAML assertion against the information currently maintained in application records systems. The Interface specification requires that CSPs which do not collect or maintain SSN, DOB, and/or physical address information to enter a null field for these attribute elements. The attribute information contained in the assertion is intended for the purposes of activation, and will not be provided to agencies that do not already have the authority to maintain this attribute information. AAs/records systems that do not collect or maintain the attribute fields of SSN, DOB, or physical address will not be passed that information in the SAML assertion from the CSPs. The EAuthentication AAs can also determine that they do not want to receive the additional attribute information of partial SSN, DOB and physical address and can opt out of receiving this information in the SAML assertions.

The E-Authentication Federation/Service Component does not involve any new collection of information from end users. If a Federal agency chooses to create or modify a records system to maintain information expressed in the SAML assertion, it must establish or amend a system of records (SOR) notice through publication in the **Federal Register**. Federal agencies that serve as CSPs or AAs may choose to maintain audit logs for browser-based access; such logs may include transaction data associated with the SAML assertion. Such audit logs are used to monitor browser access and are not considered systems of records requiring coverage under the Privacy Act. Once the identity information is known to the AA, the user interacts directly with the AA for business transactions. While the EAuthentication Service Component addresses the need for common infrastructure for authenticating end users to applications, authorization privileges at the application are beyond the scope of the E-Authentication initiative. Authorization and related functionality such as access control and privilege management are left to the application owners. Ensuring trust between the participating entities of the EAuthentication Federation (AAs, CSPs and End users) is core to the mission of the E-Authentication initiative. The EAuthentication Service Component provides:

- Policies and guidelines for Federal authentication;
- Credential assessments and authorizations;
- Technical architecture and documents, including Interface Specifications, for communications within the E-Authentication Federation Network;
- Interoperability testing of candidate products, schemes or protocols;
- Business rules for operating within the Federation; and
- Management and control of accepted federation schemes operating within the environment.

The E-Authentication Service Component technical approach has two different architectural techniques, assertion-based authentication and certificate-based authentication. PIN and Password authentications typically use assertion-based authentication, where users authenticate to the selected CSP, which in turn asserts their identity to the AA. Certificate-based authentication relies on X.509v3 digital certificates in a Public Key Infrastructure (PKI) for authentication, and can be used at any assurance level. PKI credentials offer considerable advantages for authentication. Certificates can be validated using only public information. Standards for PKI are also more mature than other authentication technologies and more widely used than the emerging standards for assertion-based authentication of PIN and password credentials. Nevertheless, the Authentication Service Component incorporates both assertion-based and certificate-based authentication to

provide the broadest range of flexibility and choices to Federal agencies and end users.

C. Purpose

The General Services Administration (GSA) is responsible for assisting Federal agencies with the implementation and use of digital signature technologies to enhance electronic access to government information and services by all eligible persons. In order to ensure that the ACES program certificates are issued to the proper individuals, GSA will continue to collect identity information from persons who elect to participate in ACES.

D. Annual Reporting Burden

Respondents: 1,000,000.
Responses Per Respondent: 1.
Hours Per Response: .25.
Total Burden Hours: 250,000.
Obtaining Copies of Proposals: Requesters may obtain a copy of the information collection documents from the General Services Administration, Regulatory Secretariat (VIR), 1800 F Street, NW., Room 4035, Washington, DC 20405, telephone (202) 501–4755. Please cite OMB Control No. 3090–0270, Access Certificates for Electronic Services (ACES), in all correspondence.

Dated: July 18, 2006

Michael W. Carleton,

Chief Information Officer.

[FR Doc. E6–11760 Filed 7–24–06; 8:45 am]

BILLING CODE 6820–DH–S

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

[Docket No. 2006N–0038]

Agency Information Collection Activities; Announcement of Office of Management and Budget Approval; Irradiation in the Production, Processing, and Handling of Food

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA) is announcing that a collection of information entitled ''Irradiation in the Production, Processing, and Handling of Food'' has been approved by the Office of Management and Budget (OMB) under the Paperwork Reduction Act of 1995.

FOR FURTHER INFORMATION CONTACT: Jonna Capezzuto, Office of Management Programs (HFA–250), Food and Drug Administration, 5600 Fishers Lane, Rockville, MD 20857, 301–827–4659.

SUPPLEMENTARY INFORMATION: In the **Federal Register** of May 11, 2006 (71 FR 27503), the agency announced that the proposed information collection had been submitted to OMB for review and clearance under 44 U.S.C. 3507. An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless it displays a currently valid OMB control number. OMB has now approved the information collection and has assigned OMB control number 0910–0186. The approval expires on June 30, 2009. A copy of the supporting statement for this information collection is available on the Internet at *http://www.fda.gov/ohrms/dockets*.

Dated: July 17, 2006.

Jeffrey Shuren,

Assistant Commissioner for Policy.

[FR Doc. E6–11776 Filed 7–24–06; 8:45 am]

BILLING CODE 4160–01–S

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

Anti-Infective Drugs Advisory Committee; Notice of Meeting

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice.

This notice announces a forthcoming meeting of a public advisory committee of the Food and Drug Administration (FDA). The meeting will be open to the public.

Name of Committee: Anti-Infective Drugs Advisory Committee.

General Function of the Committee: To provide advice and recommendations to the agency on FDA's regulatory issues.

Date and Time: The meeting will be held on September 11 and 12, 2006, from 8 a.m. to 5 p.m.

Location: Hilton-Gaithersburg, Salons A, B, and C, 620 Perry Pkwy, Gaithersburg, MD.

Contact Person: Sohail Mosaddegh, Center for Drug Evaluation and Research (HFD–21), Food and Drug Administration, 5600 Fishers Lane (for express delivery, 5630 Fishers Lane, rm. 1093) Rockville, MD 20857, 301–827–7001, fax: 301–827–6776, e-mail: *sohail.mosaddegh@fda.hhs.gov*, or FDA Advisory Committee Information Line, 1–800–741–8138 (301–443–0572 in the Washington DC area), code 3014512530. Please call the Information Line for up-to-date information on this meeting. The background material will become available no later than the day before the meeting and will be posted on FDA's Web site at *http://www.fda.gov/ohrms/dockets/ac/acmenu.htm* under the heading ''Anti-Infective Drugs Advisory Committee (AIDAC).'' (Click on the year 2006 and scroll down to AIDAC meetings.)

Agenda: On September 11, 2006, the committee will discuss new drug applications (NDAs) 21–931, garenoxacin mesylate tablets, 400 milligrams (mg) and 600 mg, and NDA 21–932, intravenous garenoxacin mesylate, 400 mg (200 milliliters (mL) of 2 mg/mL) and 600 mg (300 mL of 2 mg/mL), proposed trade name GENINAX, submitted by Schering Corp., for the proposed treatment indications of acute bacterial exacerbation of chronic bronchitis, acute bacterial sinusitis, community-acquired pneumonia, complicated and uncomplicated skin and skin structure infections, and complicated intra-abdominal infections. On September 12, 2006, the committee will discuss supplemental new drug application (sNDA) 21–158/S–006, Factive (gemifloxacin mesylate) Tablets, submitted by Oscient Pharmaceuticals Corp., for the proposed treatment of acute bacterial sinusitis.

Procedure: Interested persons may present data, information, or views, orally or in writing, on issues pending before the committee. Written submissions may be made to the contact person on or before August 25, 2006. Oral presentations from the public will be scheduled between approximately 1:30 p.m. and 2 p.m. on September 11, 2006, and between approximately 1 p.m. and 1:30 p.m. on September 12, 2006. Time allotted for each presentation may be limited. Those desiring to make formal oral presentations should notify the contact person and submit a brief statement of the general nature of the evidence or arguments they wish to present, the names and addresses of proposed participants and an indication of the approximate time requested to make their presentation on or before August 25, 2006.

Persons attending FDA's advisory committee meetings are advised that the agency is not responsible for providing access to electrical outlets.

FDA welcomes the attendance of the public at its advisory committee meetings and will make every effort to accommodate persons with physical disabilities or special needs. If you require special accommodations due to a disability, please contact Sohail Mosaddegh (see *Contact Person*) at least 7 days in advance of the meeting.

Notice of this meeting is given under the Federal Advisory Committee Act (5 U.S.C. app. 2).

Dated: July 17, 2006.

Randall W. Lutter,

Associate Commissioner for Policy and Planning.

[FR Doc. E6–11772 Filed 7–24–06; 8:45 am]

BILLING CODE 4160–01–S

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

Obstetrics and Gynecology Devices Panel of the Medical Devices Advisory Committee; Notice of Meeting

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice.

This notice announces a forthcoming meeting of a public advisory committee of the Food and Drug Administration (FDA). The meeting will be open to the public.

Name of the Committee: Obstetrics and Gynecology Devices Panel of the Medical Devices Advisory Committee.

General Function of the Committee: To provide advice and recommendations to the agency on FDA's regulatory issues.

Date and Time: The meeting will be held on August 29, 2006, from 8 a.m. to 5 p.m.

Location: Hilton Washington DC North/Gaithersburg, Montgomery Ballroom, 620 Perry Pkwy., Gaithersburg, MD 20877.

Contact: Michael Bailey, Center for Devices and Radiological Health (HFZ–470), Food and Drug Administration, 9200 Corporate Blvd., Rockville, MD 20850, 301–594–1180 or FDA Advisory Committee Information Hotline, 1–800–741–8138 (301–443–0572 in the Washington, DC area), code 3014512524. Please call the Information Line for up-to-date information on this meeting.

Agenda: The committee will discuss, make recommendations, and vote on a premarket approval application for a non-invasive device for use as a complement to clinical breast examination in asymptomatic women between the ages of 30 to 39. Background information, including the agenda and questions for the committee, will be available to the public one business day before the meeting on the Internet at *http://www.fda.gov/cdrh/panel* (click on ''Upcoming CDRH Advisory Panel/Committee Meetings'').

Procedure: Interested persons may present data, information, or views, orally or in writing, on issues pending before the committee. Written submissions may be made to the contact person on or before August 22, 2006. Oral presentations from the public will be scheduled between approximately 8:15 a.m. and 8:45 a.m., and between approximately 3:30 p.m. and 4 p.m. Time allotted for each presentation may be limited. Those desiring to make formal oral presentations should notify the contact person and submit a brief statement of the general nature of the evidence or arguments they wish to present, the names and addresses of proposed participants, and an indication of the approximate time requested to make their presentation on or before August 22, 2006.

Persons attending FDA's advisory committee meetings are advised that the agency is not responsible for providing access to electrical outlets.

FDA welcomes the attendance of the public at its advisory committee meetings and will make every effort to accommodate persons with physical disabilities or special needs. If you require special accommodations due to a disability, please contact AnnMarie Williams at least 7 days in advance of the meeting at 301–827–7291.

Notice of this meeting is given under the Federal Advisory Committee Act (5 U.S.C. app. 2).

Dated: July 17, 2006.

Randall W. Lutter,

Associate Commissioner for Policy and Planning.

[FR Doc. E6–11773 Filed 7–24–06; 8:45 am]

BILLING CODE 4160–01–S

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

General and Plastic Surgery Devices Panel of the Medical Devices Advisory Committee; Notice of Meeting

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice.

This notice announces a forthcoming meeting of a public advisory committee of the Food and Drug Administration (FDA). At least one portion of the meeting will be closed to the public.

Name of Committee: General and Plastic Surgery Devices Panel of the Medical Devices Advisory Committee.

General Function of the Committee: To provide advice and recommendations to the agency on FDA's regulatory issues.

Date and Time: The meeting will be held on August 24, 2006, from 8 a.m. to 5 p.m., and on August 25, 2006, from 9 a.m. to 5 p.m.

Location: Holiday Inn, Walker/Whetstone Rooms, Two Montgomery Village Ave., Gaithersburg, MD.

Contact Person: David Krause, Center for Devices and Radiological Health (HFZ–410), Food and Drug Administration, 9200 Corporate Blvd., Rockville, MD 20850, 301–594–3090, ext. 141, or FDA Advisory Committee Information Line, 1–800–741–8138 (301–443–0572 in the Washington, DC area), code 3014512519. Please call the Information Line for up-to-date information on this meeting.

Agenda: On August 24, 2006, the committee will discuss, make recommendations, and vote on a premarket approval application (PMA) for an injectable device intended for use in the correction of lipoatrophy of the face in HIV (human immunodeficiency virus) positive patients and a second PMA for the same device intended for use as a filler material to restore soft tissue facial contours such as nasolabial folds. On August 25, 2006, the committee will discuss and make recommendations on the reclassification, to Class II, of a Class III medical device: Cyanoacrylate tissue adhesive. Background information for this meeting, including the agenda and questions for the committee, will be available to the public 1 business day before the meeting on the Internet at *http://www.fda.gov/cdrh/panel* (click on ''Upcoming CDRH Advisory Panel/Committee Meetings''). Material for the August 24 and 25 sessions will be posted on August 23, 2006.

Procedure: On August 24, 2006, from 8 a.m. to 5 p.m., and on August 25, 2006, from 9:30 a.m. to 5 p.m., the meeting is open to the public. Interested persons may present data, information, or views, orally or in writing, on issues pending before the committee. Written submissions may be made to the contact person on or before August 10, 2006. On August 24, 2006, oral presentations from the public will be scheduled between approximately 8:30 a.m. and 9 a.m., approximately 11:45 a.m. and 12:15 p.m., approximately 1:45 p.m. and 2:15 p.m., and approximately 3:45 p.m. and 4:15 p.m. On August 25, 2006, oral presentations from the public will be scheduled between approximately 11 a.m. and 12 noon. Time allotted for each presentation may be limited. Those desiring to make formal oral presentations should notify the contact person and submit a brief statement of the general nature of the evidence or arguments they wish to present, the

names and addresses of proposed participants, and an indication of the approximate time requested to make their presentation on or before August 10, 2006.

Closed Committee Deliberations: On August 25, 2006, from 9 a.m. to 9:30 a.m., the meeting will be closed to permit FDA to present to the committee trade secret and/or confidential commercial information (5 U.S.C. 552b(c)(4)) relating to pending issues and applications.

Persons attending FDA's advisory committee meetings are advised that the agency is not responsible for providing access to electrical outlets.

FDA welcomes the attendance of the public at its advisory committee meetings and will make every effort to accommodate persons with physical disabilities or special needs. If you require special accommodations due to a disability, please contact AnnMarie Williams, Conference Management Staff, at 301–827–7291, at least 7 days in advance of the meeting.

Notice of this meeting is given under the Federal Advisory Committee Act (5 U.S.C., app. 2).

Dated: July 17, 2006.

Randall W. Lutter,

Associate Commissioner for Policy and Planning.

[FR Doc. E6–11775 Filed 7–24–06; 8:45 am]

BILLING CODE 4160–01–S

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

Nonprescription Drugs Advisory Committee; Notice of Meeting

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice.

This notice announces a forthcoming meeting of a public advisory committee of the Food and Drug Administration (FDA). The meeting will be open to the public.

Name of Committee: Nonprescription Drugs Advisory Committee.

General Function of the Committee: To provide advice and recommendations to the agency on FDA's regulatory issues.

Date and Time: The meeting will be held on September 25, 2006, from 8 a.m. to 5 p.m.

Location: Hilton Hotel Washington DC North/Gaithersburg, The Ballrooms, 620 Perry Pkwy., Gaithersburg, MD. The hotel phone number is 301–977–8900.

Contact Person: Darrell Lyons, Center for Drug Evaluation and Research (HFD 21), Food and Drug Administration, 5600 Fishers Lane (for express delivery, 5630 Fishers Lane, rm. 1093) Rockville, MD 20857, 301–827–7001, FAX: 301–827–6778, e-mail: *lyonsd@cder.fda.gov* or FDA Advisory Committee Information Line, 1–800–741–8138 (301–443–0572 in the Washington, DC area) code 3014512541. Please call the Information Line for up to date information on this meeting.

Agenda: The committee will consider issues related to the analysis and interpretation of consumer behavior studies conducted to support marketing of nonprescription drug products. The background material will become available no later than the day before the meeting and will be posted under the Nonprescription Drugs Advisory Committee (NDAC) docket site at *http://www.fda.gov/ohrms/dockets/ac/acmenu.htm*. (Click on the year 2006 and scroll down to NDAC meetings.)

Procedure: Interested persons may present data, information, or views, orally or in writing, on issues pending before the committee. Written submissions may be made to the contact person on or before September 11, 2006. Oral presentations from the public will be scheduled between approximately 1 p.m. and 2 p.m. Time allotted for each presentation may be limited. Those desiring to make formal oral presentations should notify the contact person and submit a brief statement of the general nature of the evidence or arguments they wish to present, the names and addresses of proposed participants, and an indication of the approximate time requested to make their presentation before September 11, 2006.

Persons attending FDA's advisory committee meetings are advised that the agency is not responsible for providing access to electrical outlets.

FDA welcomes the attendance of the public at its advisory committee meetings and will make every effort to accommodate persons with physical disabilities or special needs. If you require special accommodations due to a disability, please contact Darrell Lyons at least 7 days in advance of the meeting.

Notice of this meeting is given under the Federal Advisory Committee Act (5 U.S.C. app. 2).

Dated: July 17, 2006.

Randall W. Lutter,

Associate Commissioner for Policy and Planning.

[FR Doc. E6–11774 Filed 7–24–06; 8:45 am]

BILLING CODE 4160–01–S

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Cancer Institute; Notice of Closed Meeting

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. Appendix 2), notice is hereby given of the following meeting.

The meeting will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5 U.S.C., as amended. The grant applications and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the grant applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: National Cancer Institute Special Emphasis Panel, Spore in GI Cancer.

Date: September 11–13, 2006.

Time: 5 p.m. to 6 p.m.

Agenda: To review and evaluate grant applications.

Place: Doubletree Hotel, 8120 Wisconsin Ave., Bethesda, MD 20814.

Contact Person: Shamala K. Srinivas, PhD, Scientific Review Administrator, Research Programs Review Branch, Division of Extramural Activities, National Cancer Institute, 6116 Executive Boulevard, Room 8123, Bethesda, MD 20892. 301–594–1224. *ss537t@nih.gov*.

(Catalogue of Federal Domestic Assistance Program Nos. 93.392, Cancer Construction; 93.393, Cancer Cause and Prevention Research; 93.394, Cancer Detection and Diagnosis Research; 93.395, Cancer Treatment Research; 93.396, Cancer Biology Research; 93.397, Cancer Centers Support; 93.398, Cancer Research Manpower; 93.399, Cancer Control, National Institutes of Health, HHS)

Dated: July 18, 2006.

Anna Snouffer,

Acting Director, Office of Federal Advisory Committee Policy.

[FR Doc. 06–6452 Filed 7–24–06; 8:45 am]

BILLING CODE 4140–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Cancer Institute; Notice of Closed Meeting

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. Appendix 2), notice

is hereby given of the following meeting.

The meeting will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5 U.S.C., as amended. The grant applications and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the grant applications, the disclosure of which would constitute a clearly unwarranted invasion of personal activity.

Name of Committee: National Cancer Institute Initial Review Group, Subcommittee A—Cancer Centers, Cancer Centers.

Date: December 7–8, 2006.

Time: 1 p.m. to 1 p.m.

Agenda: To review and evaluate grant applications.

Place: Marriott Bethesda North Hotel & Conference Center, 5701 Marinelli Road, N. Bethesda, MD 20852.

Contact Person: David E. Maslow, PhD, Scientific Review Administrator, Resources and Training Review Branch, Division of Extramural Activities, National Cancer Institute, 6116 Executive Blvd., Room 8117, Bethesda, MD 20892–7405, (301) 496–2330, *dm65y@nih.gov*.

(Catalogue of Federal Domestic Assistance Program Nos. 93.392, Cancer Construction; 93.393, Cancer Cause and Prevention Research; 93.394, Cancer Detection and Diagnosis Research; 93.395, Cancer Treatment Research; 93.396, Cancer Biology Research; 93.397, Cancer Centers Support; 93.398, Cancer Research Manpower, 93.399, Cancer Control, National Institutes of Health, HHS)

Dated: July 18, 2006.

Anna Snouffer,

Acting Director, Office of Federal Advisory Committee Policy.

[FR Doc. 06–6459 Filed 7–24–06; 8:45 am]

BILLING CODE 4140–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Cancer Institute; Notice of Closed Meeting

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. Appendix 2), notice is hereby given of the following meeting.

The meeting will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5 U.S.C., as amended. The contract proposals and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the contract proposals, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: National Cancer Institute Special Emphasis Panel, SBIR Topic 185 ''Development of Novel Agents Directed Against Childhood Cancer Molecular Targets.''

Date: July 24, 2006.

Time: 1 p.m. to 3 p.m.

Agenda: To review and evaluate contract proposals.

Place: National Institutes of Health, National Cancer Institute, 6116 Executive Boulevard, Room 8061, Rockville, MD 20852 (Telephone Conference Call).

Contact Person: Kirt Vener, PhD, Branch Chief, Special Review and Logistics Branch, Division of Extramural Activities, National Cancer Institute, National Institutes of Health, 6116 Executive Boulevard, Room 8061, Bethesda, MD 20892, (301) 496–7174, *venerk@mail.nih.gov.*

This notice is being published less than 15 days prior to the meeting due to the timing limitations imposed by the review and funding cycle.

Any interested person may file written comments with the committee by forwarding the statement to the Contact Person listed on this notice. The statement should include the name, address, telephone number and when applicable, the business or professional affiliation of the interested person.

(Catalogue of Federal Domestic Assistance Program Nos. 93.392, Cancer Construction; 93.383, Cancer Cause and Prevention Research; 93.394, Cancer Detection and Diagnosis Research; 93.395, Cancer Treatment Research; 93.396, Cancer Biology Research; 93.397, Cancer Centers Support; 93.398, Cancer Research Manpower; 93.399, Cancer Control, National Institutes of Health, HHS)

Dated: July 18, 2006.

Anna Snouffer,

Acting Director, Office of Federal Advisory Committee Policy.

[FR Doc. 06–6461 Filed 7–24–06; 8:45 am]

BILLING CODE 4140–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Cancer Institute; Notice of Closed Meeting

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. Appendix 2), notice is hereby given of the following meeting.

The meeting will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5 U.S.C., as amended. The grant applications and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the grant applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: National Cancer Institute Special Emphasis Panel, Spore in Brain Tumor and Lymphoma.

Date: September 11–13, 2006.

Time: 5 p.m. to 5 p.m.

Agenda: To review and evaluate grant applications.

Place: Doubletree Hotel Bethesda, 8120 Wisconsin Ave., Bethesda, MD 20814.

Contact Person: Wlodek Lopaczynski, MD, PhD, Scientific Review Administrator, Research Programs Review Branch, Division of Extramural Activities, National Cancer Institute, 6116 Executive Blvd. Room 8133, Bethesda, MD 20892, 301–594–1402, *lopacw@mail.nih.gov.*

(Catalogue of Federal Domestic Assistance Program Nos. 93.392, Cancer Construction; 93.393, Cancer Cause and Prevention Research; 93.394, Cancer Detection and Diagnosis Research; 93.395, Cancer Treatment Research; 93.396, Cancer Biology Research; 93.397, Cancer Centers Support; 93.398, Cancer Research Manpower; 93.399, Cancer Control, National Institutes of Health, HHS)

Dated: July 18, 2006.

Anna Snouffer,

Acting Director, Office of Federal Advisory Committee Policy.

[FR Doc. 06–6463 Filed 7–24–06; 8:45 am]

BILLING CODE 4140–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Center for Complementary & Alternative Medicine; Amended Notice of Meeting

Notice is hereby given of a change in the meeting of the National Center for Complementary and Alternative Medicine Special Emphasis Panel, July 25, 2006, 8 a.m. to July 25, 2006, 5 p.m., National Center for Complementary, and Alternative Medicine, NIH, 6707 Democracy Boulevard, Suite 401, Bethesda, MD, 20892 which has published in the **Federal Register** on July 6, 2006, 71 FR 38405.

The meeting date has been changed from July 25, 2006 to July 27, 2006. The meeting is closed to the public.

Dated: July 18, 2006.

Anna Snouffer,

Acting Director, Office of Federal Advisory Committee Policy.

[FR Doc. 06–6454 Filed 7–24–06; 8:45 am]

BILLING CODE 4140–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Center for Research Resources; Notice of Closed Meetings

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. Appendix 2), notice is hereby given of the following meetings.

The meetings will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5 U.S.C., as amended. The grant applications and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the grant applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: National Center for Research Resources Special Emphasis Panel, Interdisciplinary Research Consortium I.

Date: August 16, 2006.

Time: 8 a.m. to 5 p.m.

Agenda: To review and evaluate grant applications.

Place: National Institutes of Health, One Democracy Plaza, 6701 Democracy Boulevard, RM–1068, Bethesda, MD 20892 (Virtual Meeting).

Contact Person: Carol Lambert, PhD, Scientific Review Administrator, Office of Review, National Institutes of Health, NCRR, 6701 Democracy Plaza, Room 1076, MSC 4874, Bethesda, MD 20892. (301) 435–0814. *lambert@mail.nih.gov.*

Name of Committee: National Center for Research Resources Special Emphasis Panel, Interdisciplinary Research Consortium II.

Date: August 16, 2006.

Time: 8 a.m. to 10 a.m.

Agenda: To review and evaluate grant applications.

Place: National Institutes of Health, One Democracy Plaza, 6701 Democracy Boulevard, RM–1074, Bethesda, MD 20892 (Virtual Meeting).

Contact Person: Bonnie Dunn, PhD, Scientific Review Administrator, Office of Review, National Center for Research Resources, National Institutes of Health, 6701 Democracy Blvd., Dem. 1, Room 1074, MSC 4874, Bethesda, MD 20892–4874. (301) 435–0824. *dunnbo@mail.nih.gov.*

(Catalogue of Federal Domestic Assistance Program Nos. 93.306, Comparative Medicine; 93.333, Clinical Research; 93.371, Biomedical Technology; 93.389, Research Infrastructure, 93.306, 93.333, National Institutes of Health, HHS)

Dated: July 18, 2006.

Anna Snouffer,

Acting Director, Office of Federal Advisory Committee Policy.

[FR Doc. 06–6455 Filed 7–24–06; 8:45 am]

BILLING CODE 4140–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Eye Institute; Notice of Closed Meetings

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. Appendix 2), notice is hereby given of the following meetings.

The meetings will be closed to the public in accordance with the provisions set forth in sections 552b(c)(3)(4) and 552b(c)(6), Title 5 U.S.C., as amended. The grant applications and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the grant applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: National Eye Institute Special Emphasis Panel, Institutional Training Applications.

Date: August 4, 2006.

Time: 8:30 a.m. to 5 p.m.

Agenda: To review and evaluate grant applications.

Place: The Embassy Suites at the Chevy Chase Pavilion, 4300 Military Road, NW., Washington, DC 20015.

Contact Person: Houmam H. Araj, PhD, Scientific Review Administrator, Division of Extramural Research, National Eye Institute, NIH, 5635 Fishers Lane, Suite 1300, Bethesda, MD 20892–9602. 301–451–2020. *haraj@mail.nih.gov.*

This notice is being published less than 15 days prior to the meeting due to the timing limitations imposed by the review and funding cycle.

Name of Committee: National Eye Institute Special Emphasis Panel, NEI Pathways to Independence and Mentored Career Development Grant Applications.

Date: August 7, 2006.

Time: 8 a.m. to 4 p.m.

Agenda: To review and evaluate grant applications.

Place: Embassy Suites at the Chevy Chase Pavilion, 4300 Military Road, NW., Washington, DC 20015.

Contact Person: Samuel Rawlings, PhD, Chief, Scientific Review Branch, Division of Extramural Research, National Eye Institute, 5635 Fishers Lane, Suite 1300, MSC 9300, Bethesda, MD 20892–9300. 301–451–2020. *rawlings@nei.nih.gov.*

This notice is being published less than 15 days prior to the meeting due to the timing limitations imposed by the review and funding cycle.

Catalogue of Federal Domestic Assistance Program Nos. 93.867, Vision Research, National Institutes of Health, HHS)

Dated: July 18, 2006.

Anna Snouffer,

Acting Director, Office of Federal Advisory Committee Policy.

[FR Doc. 06–6456 Filed 7–24–06; 8:45 am]

BILLING CODE 4140–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Heart, Lung, and Blood Institute; Notice of Closed Meeting

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. Appendix 2), notice is hereby given of the following meeting.

The meeting will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5 U.S.C., as amended. The grant applications and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and patentable material, and personal information concerning individuals associated with the grant applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: National Heart, Lung, and Blood Institute Special Emphasis Panel, Research Career Development Award Program in Vascular Medicine.

Date: July 26, 2006.

Time: 8:30 a.m. to 5 p.m.

Agenda: To review and evaluate grant applications.

Place: Marriott Bethesda Hotel, 6711 Democracy Blvd., Bethesda, MD 20817.

Contact Person: Shelley S. Sehnert, PhD, Scientific Review Administrator, Review Branch, NIH/NHLBI, 6701 Rockledge Drive, Room 7206, Bethesda, MD 20892–7924. 301/435–0303. *ssehnert@nhibi.nih.gov.*

This notice is being published less than 15 days prior to the meeting due to the timing limitations imposed by the review and funding cycle.

(Catalogue of Federal Domestic Assistance Program Nos. 93.233, National Center for Sleep Disorders Research; 93.837, Heart and Vascular Diseases Research; 93.838, Lung Diseases Research; 93.839, Blood Diseases and Resources Research, National Institutes of Health, HHS)

Dated: July 18, 2006.

Anna Snouffer,

Acting Director, Office of Federal Advisory Committee Policy.

[FR Doc. 06–6453 Filed 7–24–05; 8:45 am]

BILLING CODE 4140–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Human Genome Research Institute; Notice of Meeting

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. Appendix 2), notice is hereby given of a meeting of the National Advisory Council for Human Genome Research.

The meeting will be open to the public as indicated below, with attendance limited to space available. Individuals who plan to attend and need special assistance, such as sign language interpretation or other reasonable accommodations, should notify the Contact Person listed below in advance of the meeting.

The meeting will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5 U.S.C., as amended. The grant applications and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the grant applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: National Advisory Council for Human Genome Research.

Date: September 11–12, 2006.

Open: September 11, 2006, 8:30 a.m. to 3 p.m.

Agenda: To discuss matters of program relevance.

Place: National Institutes of Health, 5635 Fishers Lane, Bethesda, MD 20892.

Closed: September 11, 2006, 3 p.m. to 5 p.m.

Agenda: To review and evaluate grant applications.

Place: National Institutes of Health, 5635 Fishers Lane, Bethesda, MD 20892.

Closed: September 12, 2006, 8:30 a.m. to 5 p.m.

Agenda: To review and evaluate grant applications and/or proposals.

Place: National Institutes of Health, 5635 Fishers Lane, Bethesda, MD 20892.

Contact Person: Mark S. Guyer, PhD, Director for Extramural Research, National Human Genome Research Institute, 5635 Fishers Lane, Suite 4076, MSC 9305, Bethesda, MD 20892, 301–496–7531. *guyerm@mail.nih.gov.*

Any interested person may file written comments with the committee by forwarding the statement to the Contract Person listed on this notice. The statement should include the name, address, telephone number and when applicable, the business or professional affiliation of the interested person.

Information is also available on the Institute's/Center's home page: *http://www.genome.gov/11509849,* where an agenda and any additional information for the meeting will be posted when available.

(Catalogue of Federal Domestic Assistance Program Nos. 93.172, Human Genome Research, National Institutes of Health, HHS)

Dated: July 18, 2006.

Anna Snouffer,

Acting Director, Office of Federal Advisory Committee Policy.

[FR Doc. 06–6462 Filed 7–24–06; 8:45 am]

BILLING CODE 4140–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Institute on Alcohol Abuse and Alcoholism; Notice of Closed Meeting

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. Appendix 2), notice is hereby given of the following meeting.

The meeting will be closed to the public in accordance with the provisions set forth in section 552b(c)(4) and 552b(c)(6), Title 5 U.S.C., as amended. The grant applications and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with grant applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: National Institute on Alcohol Abuse and Alcoholism Special Emphasis Panel.

Date: August 1, 2006.

Time: 10 a.m. to 11 a.m.

Agenda: To review and evaluate grant applications.

Place: National Institutes of Health, 5635 Fishers Lane, Bethesda, MD 20892 (Telephone Conference Call).

Contact Person: Ernestine Vanderveen, PhD, Acting Chief, EPRB, NIH/NIAAA, Extramural Project Review Branch, 5635 Fishers lane, Room 3039, Office of Extramural Activities, Bethesda, MD 20892–9304. (301) 443–2531. *tvander@mail.nih.gov.*

This notice is being published less than 15 days prior to the meeting due to the timing limitations imposed by the review and funding cycle.

(Catalogue of Federal Domestic Assistance Program Nos. 93.271, Alcohol Research Career Development Awards for Scientists and Clinicians; 93.272, Alcohol National Research Service Awards for Research Training; 93.273, Alcohol Research Programs; 93.891, Alcohol Research Center Grants, National Institutes of Health, HHS)

Dated: July 18, 2006.

Anna Snouffer,

Acting Director, Office of Federal Advisory Committee Policy.

[FR Doc. 06–6451 Filed 7–24–06; 8:45 am]

BILLING CODE 4140–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Institute of Mental Health; Notice of Closed Meetings

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. Appendix 2), notice is hereby given of the following meetings.

The meetings will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5 U.S.C., as amended. The contract proposals and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the contract proposals, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: National Institute of Mental Health Special Emphasis Panel, SBIR Phase 2—Topics 44, 55A and 55B.

Date: August 9, 2006.

Time: 2 p.m. to 3 p.m.

Agenda: To review and evaluate contract proposals.

Place: National Institutes of Health, Neuroscience Center, 6001 Executive Boulevard, Rockville, MD 20852 (Telephone Conference Call).

Contact Person: Aileen Schulte, PhD, Scientific Review Administrator, Division of Extramural Activities, National Institute of Mental Health, NIH, Neuroscience Center, 6001 Executive Blvd, Room 6140, MSC 9608, Bethesda, MD 20892–9608, 301–443–1225, *aschulte@mail.nih.gov.*

Name of Committee: National Institute of Mental Health Special Emphasis Panel, SBIR Phase 2—Topics, 45, 49 and 50.

Date: August 10, 2006.

Time: 2:30 p.m. to 3:30 p.m.

Agenda: To review and evaluate contract proposals.

Place: National Institutes of Health, Neuroscience Center, 6001 Executive Boulevard, Rockville, MD 20852, (Telephone Conference Call).

Contact Person: Aileen Schulte, PhD, Scientific Review Administrator, Division of Extramural Activities, National Institute of

Mental Health, NIH, Neuroscience Center, 6001 Executive Blvd, Room 6140, MSC 9608, Bethesda, MD 20892–9608, 301–443–1225, *aschulte@mail.nih.gov.*

(Catalogue of Federal Domestic Assistance Program Nos. 93.242, Mental Health Research Grants; 93.281, Scientist Development Award, Scientist Development Award for Clinicians, and Research Scientist Award; 93.282, Mental Health National Research Service Awards for Research Training, National Institutes of Health, HHS)

Dated: July 18, 2006.

Anna Snouffer,

Acting Director, Office of Federal Advisory Committee Policy.

[FR Doc. 06–6458 Filed 7–24–06; 8:45 am]

BILLING CODE 4140–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

Center for Scientific Review; Notice of Closed Meetings

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. Appendix 2), notice is hereby given of the following meetings.

The meetings will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5 U.S.C., as amended. The grant applications and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the grant applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: Center for Scientific Review Special Emphasis Panel, Global Framework.

Date: July 24, 2006.

Time: 8:30 a.m. to 12 p.m.

Agenda: To review and evaluate grant applications.

Place: Latham Hotel, 3000 M Street, NW., Washington, DC 20007,

Contact Person: Dan D. Gerendasy, PhD, Scientific Review Administrator, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 5132, MSC 7843, Bethesda, MD 20892, 301–594–6830, *gerendad@csr.nih.gov.*

This notice is being published less than 15 days prior to the meeting due to the timing limitations imposed by the review and funding cycle.

Name of Committee: Center for Scientific Review Special Emphasis Panel, Skeleton Application.

Date: July 24, 2006.

Time: 10 a.m. to 3 p.m.

Agenda: To review and evaluate grant applications.

Place: National Institutes of Health, 6701 Rockledge Drive, Bethesda, MD 20892, (Telephone Conference Call).

Contact Person: Bob Weller, PhD, Scientific Review Administrator, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 3160, MSC 7770, Bethesda, MD 20892, (301) 435–0694, *wellerr@csr.nih.gov.*

This notice is being published less than 15 days prior to the meeting due to the timing limitations imposed by the review and funding cycle.

Name of Committee: Center for Scientific Review Special Emphasis Panel, International Population Health.

Date: July 24, 2006.

Time: 12 p.m. to 6 p.m.

Agenda: To review and evaluate grant applications.

Place: Latham Hotel, 3000 M Street, NW., Washington, DC 20007.

Contact Person: Dan D. Gerendasy, PhD, Scientific Review Administrator, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 5132, MSC 7843, Bethesda, MD 20892, 301–594–6830, *gerendad@csr.nih.gov.*

This notice is being published less than 15 days prior to the meeting due to the timing limitations imposed by the review and funding cycle.

Name of Committee: Center for Scientific Review Special Emphasis Panel, HSOD Member Special Emphasis Panel.

Date: July 28, 2006.

Time: 2 p.m. to 4 p.m.

Agenda: To review and evaluate grant applications.

Place: National Institutes of Health, 6701 Rockledge Drive, Bethesda, MD 20892 (Telephone Conference Call).

Contact Person: Steven H. Krosnick, MD, Scientific Review Administrator, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 3028A, MSC 7770, Bethesda, MD 20892, (301) 435–1712, *krosnics@csr.nih.gov.*

This notice is being published less than 15 days prior to the meeting due to the timing limitations imposed by the review and funding cycle.

Name of Committee: Center for Scientific Review Special Emphasis Panel, Pilot and Feasibility Clinical Research Grants in Kidney or Urologic Diseases.

Date: July 27–28, 2006.

Time: 7 p.m. to 5 p.m.

Agenda: To review and evaluate grant applications.

Place: Holiday Inn—Silver Spring, 8777 Georgia Avenue, Silver Spring, MD 20910.

Contact Person: Daniel F. McDonald, PhD, Scientific Review Administrator, Chief, Renal and Urological Sciences IRG, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 4214, MSC 7814, Bethesda, MD 20892, (301) 435–1215, *mcdonald@csr.nih.gov.*

This notice is being published less than 15 days prior to the meeting due to the timing limitations imposed by the review and funding cycle.

Name of Committee: Center for Scientific Review Special Emphasis Panel, Special Emphasis Panel: Stress and Coping in Infants.

Date: July 31, 2006.

Time: 11 a.m. to 12 p.m.

Agenda: To review and evaluate grant applications.

Place: National Institutes of Health, 6701 Rockledge Drive, Bethesda, MD 20892 (Telephone Conference Call).

Contact Person: Maribeth Champoux, PhD, Scientific Review Administrator, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 3146, MSC 7759, Bethesda, MD 20892, 301–594–3163, *champoum@csr.nih.gov.*

This notice is being published less than 15 days prior to the meeting due to the timing limitations imposed by the review and funding cycle.

Name of Committee: Center for Scientific Review Special Emphasis Panel, Member Conflict: Mathematical Modeling.

Date: July 31, 2006.

Time: 11:15 a.m. to 12 p.m.

Agenda: To review and evaluate grant applications.

Place: National Institutes of Health, 6701 Rockledge Drive, Bethesda, MD 20892 (Telephone Conference Call).

Contact Person: Sally Ann Amero, PhD, Scientific Review Administrator, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 4190, MSC 7849, Bethesda, MD 20892, 301–435–1159, *ameros@csr.nih.gov.*

This notice is being published less than 15 days prior to the meeting due to the timing limitations imposed by the review and funding cycle.

Name of Committee: Center for Scientific Review Special Emphasis Panel, BMRD Member Special Emphasis Panel.

Date: July 31, 2006.

Time: 1 p.m. to 3:30 p.m.

Agenda: To review and evaluate grant applications.

Place: National Institutes of Health, 6701 Rockledge Drive, Bethesda, MD 20892 (Telephone Conference Call).

Contact Person: Steven H. Krosnick, MD, Scientific Review Administrator, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 3028A, MSC 7770, Bethesda, MD 20892, (301) 435–1712, *krosnics@csr.nih.gov.*

This notice is being published less than 15 days prior to the meeting due to the timing limitations imposed by the review and funding cycle.

Name of Committee: Center for Scientific Review Special Emphasis Panel, The Electron Microscopy Shared Instrumentation Review.

Date: August 3, 2006.

Time: 8 a.m. to 5 p.m.

Agenda: To review and evaluate grant applications.

Place: Watergate Hotel, 2650 Virginia Ave, NW., Washington, DC 20037.

Contact Person: Noni Byrnes, PhD, Scientific Review Administrator, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 5130 MSC 7840, Bethesda, MD 20892, (301) 435–1023, *byrnesn@csr.nih.gov.*

This notice is being published less than 15 days prior to the meeting due to the timing limitations imposed by the review and funding cycle.

Name of Committee: Center for Scientific Review Special Emphasis Panel, Bacterial Pathogenesis.

Date: August 14, 2006.

Time: 2:30 p.m. to 5:30 p.m.

Agenda: To review and evaluate grant applications.

Place: National Institutes of Health, 6701 Rockledge Drive, Bethesda, MD 20892 (Telephone Conference Call).

Contact Person: Marian Wachtel, PhD, Scientific Review Administrator, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 3208, MSC 7858, Bethesda, MD 20892, 301–435–1148, *wachtelm&csr.nih.gov.*

(Catalogue of Federal Domestic Assistance Program Nos. 93.306, Comparative Medicine; 93.333, Clinical Research, 93.306, 93.333, 93.337, 93.393–93.396, 93.837–93.844, 93.846–93.878, 93.892, 93.893, National Institutes of Health, HHS)

Dated: July 18, 2006.

Anna Snouffer,

Acting Director, Office of Federal Advisory Committee Policy.

[FR Doc. 06–6457 Filed 7–24–06; 8:45 am]

BILLING CODE 4140–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

Center for Scientific Review; Notice of Meeting

Pursuant to section 10(a) of the Federal Advisory Committee Act, as amended (5 U.S.C. Appendix 2), notice is hereby given of a meeting of the National Institutes of Health Peer Review Advisory Committee.

The meeting will be open to public, with attendance limited to space available. Individuals who plan to attend and need special assistance, such as sign language interpretation or other reasonable accommodations, should notify the Contact Person listed below in advance of the meeting.

Name of Committee: National Institutes of Health Peer Review Advisory Committee.

Date: August 28, 2006.

Time: 8:30 a.m. to 5 p.m.

Agenda: Provide technical and scientific advice to the Director, National Institutes of Health (NIH), the Deputy Director for Extramural Research, NIH and the Director, Center for Scientific Review (CSR), on matters relating broadly to review procedures and policies for the evaluation of scientific and technical merit of applications for grants and awards.

Place: Hyatt Regency Bethesda, One Bethesda Metro Center, 7400 Wisconsin Avenue, Bethesda, MD 20814.

Contact Person: Cheryl A. Kitt, PhD, Executive Secretary, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 3030, MSC 7776, Bethesda, MD 20892, 301–435–1112, *kittc@csr.nih.gov.*

Any interested person may file written comments with the committee by forwarding the statement to the Contact Person listed on this notice. The statement should include the name, address, telephone number and when applicable, the business or professional affiliation of the interested person.

(Catalogue of Federal Domestic Assistance Program Nos. 93.306, Comparative Medicine; 93.333, Clinical Research, 93.306, 93.333, 93.337, 93.393–93.396, 93.837–93.444, 93.846–93.878, 93.892, 93.893, National Institutes of Health, HHS)

Dated: July 18, 2006.

Anna Snouffer,

Acting Director, Office of Federal Advisory Committee Policy.

[FR Doc. 06–6460 Filed 7–24–06; 8:45 am]

BILLING CODE 4140–01–M

DEPARTMENT OF HOMELAND SECURITY

Effective Security of Aircraft and Safety of Passengers Transiting Port-au-Prince, Haiti

AGENCY: Department of Homeland Security.

ACTION: Notice.

SUMMARY: This notice informs the public that the Secretary of Homeland Security has now determined that Port-au-Prince International Airport, Port-au-Prince, Haiti, maintains and carries out effective security measures.

FOR FURTHER INFORMATION CONTACT: Richard H. Stein, General Manager, International, Transportation Security Administration, 601 South 12th Street, Arlington, VA, 22202, Telephone: (571) 227–2764, e-mail: *Richard.Stein@dhs.gov*.

Notice

On January 24, 2005, the Secretary of Homeland Security published notice in the **Federal Register** (70 FR 3378) of his determination issued on December 22, 2004, pursuant to 49 U.S.C. 44907, that Port-au-Prince International Airport, Port-au-Prince, Haiti, did not maintain and carry out effective security measures. He based the determination on Transportation Security Administration (TSA) assessments that security measures used at Port-au-Prince International Airport did not meet the standards established by the International Civil Aviation Organization (ICAO).

The Secretary of Homeland Security now finds that Port-au-Prince International Airport maintains and carries out effective security measures; based on recent assessments by TSA that reveal that security measures used at the airport meet the ICAO standards. Accordingly, the Department of Homeland Security (DHS) is removing the public notification requirements on U. S. and foreign air carrier (and their agents) to provide notice of the Department's determination to each passenger buying a ticket between the United States and Port-au-Prince International Airport, and is directing all U. S. airports to remove signs posted regarding the determination. Further, DHS is notifying the news media of this determination.

Issued in Washington, DC, on June 27, 2006.

Michael Chertoff,

Secretary.

[FR Doc. E6–11761 Filed 7–24–06; 8:45 am]

BILLING CODE 9910–05–P

DEPARTMENT OF HOMELAND SECURITY

Bureau of Customs and Border Protection

Automated Commercial Environment (ACE): National Customs Automation Program Test Of Automated Truck Manifest for Truck Carrier Accounts; Deployment Schedule

AGENCY: Customs and Border Protection; Department of Homeland Security.

ACTION: General notice.

SUMMARY: The Bureau of Customs and Border Protection, in conjunction with the Department of Transportation, Federal Motor Carrier Safety Administration, is currently conducting a National Customs Automation Program (NCAP) test concerning the transmission of automated truck manifest data. This document announces the next groups, or clusters, of ports to be deployed for this test.

DATES: The ports identified in this notice, in the state of New York, are expected to deploy no earlier than the dates provided in this notice, all of which are between the months of July and August, 2006. Comments concerning this notice and all aspects of the announced test may be submitted at any time during the test period.

FOR FURTHER INFORMATION CONTACT: Mr. James Swanson via e-mail at *james.d.swanson@dhs.gov*.

SUPPLEMENTARY INFORMATION:

Background

The National Customs Automation Program (NCAP) test concerning the transmission of automated truck manifest data for truck carrier accounts was announced in a General Notice published in the **Federal Register** (69 FR 55167) on September 13, 2004. That notice stated that the test of the Automated Truck Manifest would be conducted in a phased approach, with primary deployment scheduled for no earlier than November 29, 2004.

A series of **Federal Register** notices have announced the implementation of the test, beginning with a notice published on May 31, 2005 (70 FR 30964). As described in that document, the deployment sites have been phased in as clusters. The ports identified belonging to the first cluster were announced in the May 31, 2005, notice. Additional clusters were announced in subsequent notices published in the **Federal Register** including: 70 FR 43892, published on July 29, 2005; 70 FR 60096, published on October 14, 2005; 71 FR 3875, published on January 24, 2006; and 71 FR 23941, published on April 25, 2006.

New Clusters

Through this notice, CBP announces that the next clusters of ports to be brought up for purposes of deployment of the test will be in the state of New York. The test will be deployed no earlier than June 22, 2006, in the Champlain Service Port at the port of entry of Champlain and the following crossings: Cannon's Corner, Mooers, Overton's Corner, and Rouses Point. The test will be deployed no earlier than July 10, 2006, at the following ports of entry: Alexandria Bay, Ogdensburg, Massena, and Trout River; and the following crossings: Chateaugay, Churubusco, Fort Covington, and Jamieson's Line. Also no earlier than July 10, 2006, the test will be deployed at the Peace Bridge in the Service Port of Buffalo. No earlier than August 12, 2006, the test will be deployed at the Lewiston Bridge in the Service Port of Buffalo.

Previous NCAP Notices Not Concerning Deployment Schedules

On Monday, March 21, 2005, a General Notice was published in the **Federal Register** (70 FR 13514) announcing a modification to the NCAP test to clarify that all relevant data elements are required to be submitted in the automated truck manifest submission. That notice did not announce any change to the deployment schedule and is not affected by publication of this notice. All requirements and aspects of the test, as set forth in the September 13, 2004 notice, as modified by the March 21, 2005 notice, continue to be applicable.

Dated: July 18, 2006.

Jayson P. Ahern,

Assistant Commissioner, Office of Field Operations.

[FR Doc. E6–11849 Filed 7–24–06; 8:45 am]

BILLING CODE 9111–14–P

DEPARTMENT OF HOMELAND SECURITY

Bureau of Customs and Border Protection

Notice of Cancellation of Customs Broker License Due to Death of the License Holder

AGENCY: Bureau of Customs and Border Protection, U.S. Department of Homeland Security.

ACTION: General Notice.

SUMMARY: Notice is hereby given that, pursuant to Title 19 of the Code of Federal Regulations 111.51(a), the following individual Customs broker licenses and any and all permits have been cancelled due to the death of the broker:

Name	License No.	Port name
Richard R. Wohlrab	05512	New York.
Kenneth Mahand	6999	Houston.

Dated: July 18, 2006.

Jayson P. Ahern,

Assistant Commissioner, Office of Field Operations.

[FR Doc. E6–11778 Filed 7–24–06; 8:45 am]

BILLING CODE 9114–14–P

DEPARTMENT OF HOMELAND SECURITY

Bureau of Customs And Border Protection

Notice of Revocation of Customs Broker License

AGENCY: Bureau of Customs and Border Protection, U.S. Department of Homeland Security.

ACTION: General Notice.

SUMMARY: Pursuant to section 641 of the Tariff Act of 1930, as amended, (19 U.S.C. 1641) and the Customs Regulations (19 CFR 111.51), the following Customs broker license is canceled with prejudice.

Name	License #	Issuing port
A.S.A. Management Corp.	22391	New York.

Dated: July 18, 2006.

Jayson P. Ahern,

Assistant Commissioner, Office of Field Operations.

[FR Doc. E6–11779 Filed 7–24–06; 8:45 am]

BILLING CODE 9111–14–P

DEPARTMENT OF HOMELAND SECURITY

Bureau of Customs and Border Protection

Notice of Cancellation of Customs Broker License

AGENCY: Bureau of Customs and Border Protection, U.S. Department of Homeland Security.

ACTION: General notice.

SUMMARY: Pursuant to section 641 of the Tariff Act of 1930, as amended, (19 U.S.C. 1641) and the Customs Regulations (19 CFR 111.51), the following Customs broker licenses are cancelled without prejudice.

Name	License No.	Issuing port
S.J. Lam, Inc	14551	Honolulu.
Ontra, Inc	12859	San Francisco.
Bill Potts and Company	12144	Houston.
Volvo Logistics North America, Inc	22591	Charlotte.

Name	License No.	Issuing port
L.M. Lewis Company	10652	Norfolk.

Dated: July 18, 2006.

Jayson P. Ahern,

Assistant Commissioner, Office of Field Operations.

[FR Doc. E6–11780 Filed 7–24–06; 8:45 am]

BILLING CODE 9111–14–P

DEPARTMENT OF HOMELAND SECURITY

Bureau of Customs and Border Protection

Notice of Cancellation of Customs Broker License

AGENCY: Bureau of Customs and Border Protection, U.S. Department of Homeland Security.

ACTION: Customs broker license revocations for the failure to file the triennial status report and applicable fee.

SUMMARY: Pursuant to section 641 of the Tariff Act of 1930, as amended, (19 U.S.C. 1641) and Title 19 of the Code of Federal Regulations at section 111.30(d), the following Customs broker licenses are canceled without prejudice.

License port	Licensee name	License No.
Anchorage	Margaret Green	09804
Atlanta	Jennifer Cheatham Kelly	13902
Atlanta	Edward R. Stephens	12675
Atlanta	Alice Larona White	16880
Atlanta	Sherry Elaine Simpson	13412
Atlanta	Timothy R. Harmon	15070
Atlanta	Marsha D. Thomas	15561
Atlanta	William R. Druce	15555
Atlanta	Brenda K. Peek	13392
Atlanta	Joyce Logan Welch	11048
Atlanta	Laurel S. Stephens	09290
Atlanta	Jonathan D. Nordhausen	13377
Atlanta	Beverly J. Sheffield	16856
Atlanta	Nancy A. Beech	12046
Boston	Paul J. Callery	07515
Boston	AIS International, Inc	13622
Boston	Xiao-Xia Erica Zhen	17502
Boston	Rebecca M. Stracuzzi	15692
Boston	Shayona CB Group, Inc	17350
Boston	Sean Delaney	20002
Boston	Dana R. Falzarano	15383
Boston	Christopher R. Martin	15226
Boston	John M. Borgia	12651
Boston	Patrick M. Butler	11547
Boston	Mark Alan Mullen	10759
Boston	Lorne Jones	10512
Boston	Dian Christine Pedersen	09975
Boston	David John Cawley	03835
Boston	Donna Lee McCarthy	09976
Buffalo	Gordon L. MacMartin	12408
Buffalo	Patricia M. Carberry	20916
Buffalo	Andrew W. Smith	15583
Buffalo	Michael J. Cherenzia	13925
Buffalo	David A. Fubelli	14233
Buffalo	Burtram W. Anderson	04590
Buffalo	Daniel C. Muscato	10882
Buffalo	Edith M. Sanfilippo	10881
Buffalo	Steve A. Forey	09323
Buffalo	Robert E. Hadden	16033
Buffalo	Laura Jap Harper	09040
Buffalo	Matthew P. Byrnes	21262
Buffalo	Spencer Stewart	20212
Champlain	Robert L. Bronson	04600
Champlain	Michael S. Burwell	10906
Champlain	Rene A. Barriere	10905
Charleston	Sue S. Shipman	16265
Charleston	Pamela Mason Lane	10245
Charleston	Dora Lee Boyles	05868
Charleston	McFarland Heard Mikell, Jr	03625
Charlotte	Valerie Jean McGuire	13440
Charlotte	Debra Clark Hall	15498
Charlotte	Danielle Renee Muller	20846
Charlotte	John Robert Davis	20445
Charlotte	Elna L. Howard	15985
Chicago	Steven J. Van Rees	14573

License port	Licensee name	License No.
Chicago	Tracy M. Vroman	15320
Chicago	Margaret L. Benning	15488
Chicago	Alfred W Abbonato	14911
Chicago	Brian James Poshard	07626
Chicago	Lisa A. Campobasso	13532
Chicago	Richard R. Weeks	12417
Chicago	Lynn W. Redenbaugh	16430
Chicago	Robert A. Taussig	20823
Chicago	Jean Adele Reid	12216
Chicago	Vern J. Weberski	05823
Chicago	Patrick Rene Jean	12177
Chicago	Jemima Sager-Gillen	20221
Chicago	Eugene Besler	03083
Cleveland	Michael McCord	17108
Cleveland	Kathleen Gallardo-Shrank	11506
Cleveland	Lois J. Hull	09340
Cleveland	Kathleen Blaser	11539
Cleveland	Kandel Coolman Baxter	21023
Cleveland	Seid-Reza Teimouri	04643
Cleveland	Julie L. Holycross	20493
Cleveland	James B. Wiser	09368
Cleveland	Sandra Walker	14490
Cleveland	Kristine M. Roth	16451
Cleveland	William W. Shea	11616
Cleveland	John C. Blaser	11651
Cleveland	Alfred E. Andrews, Jr	14419
Denver	Douglas H. Oliver	22231
Denver	Amy D. Fisher	17318
Detroit	Jesse Murray	22217
Detroit	Fern Yvette Watkins	15834
Detroit	Gerald Anthony Mastaw	04127
Detroit	Louise Busch	04092
Detroit	Robert James Semany	03995
Detroit	Joanne B. Markstrom	07254
Detroit	Richard Paul Juneau	03764
Detroit	Lynne A. Palmitier	13772
Detroit	Robert V. Schikora	22531
El Paso	Bruce Wendell Brown	02807
El Paso	Gerald Lewis Gumbert	04699
El Paso	Rodolfo Ayon	17008
El Paso	Alfredo Munoz Candelaria	16099
El Paso	Bertha G Rizzuti	15087
El Paso	Elaine M. Little-Esqueda	15816
El Paso	Bruce Patrick McIntosh	12229
El Paso	Beatrice Kay Gumbert	05924
El Paso	Sam Esqueda	15574
El Paso	Ronald Vertrees	06989
El Paso	Manuel Romero, Jr	17112
El Paso	Robert R. Martinez	14797
Great Falls	Robert Dean Rogers	11558
Great Falls	Debra International CHB, Inc	21839
Great Falls	Debra K. Wanner	12584
Great Falls	Shane Courtney	21556
Honolulu	S DeFreest & Company, Inc	07924
Honolulu	Bruce M. Mitchell	07478
Houston	Michael Earl Wilson	08065
Houston	Wendy S. Cleveland	16867
Houston	Robert A. Spain, III	15354
Houston	Karen Sims	10971
Houston	Wanda M. Jeffcoat	10307
Houston	Edward L. Bartimmo	16241
Houston	Billy R. Potts	03993
Houston	Michael W. Bruzga	06942
Houston	Galen Sell	05704
Laredo	Mario Negrete Rangel	05703
Los Angeles	Richard Lee Wilroy	07534
Los Angeles	Thomas Leroy Haugen	16424
Los Angeles	OCS Customs Brokerage, Inc	16642
Los Angeles	Elizabeth Diane Llata-Brecht	16776
Los Angeles	Donna-Lee Vickie Burke	11263
Los Angeles	Teresa Wolven	11173
Los Angeles	John Constant Menudier	10054
Los Angeles	WC Keating, Inc	14371
Los Angeles	Josef Schmid	06672

License port	Licensee name	License No.
Los Angeles	Harold Robert Pintar	10010
Los Angeles	Leslie P. Skelton	07379
Los Angeles	Steven L. Burdolf	07546
Los Angeles	Cynthia Marie Appel	10658
Los Angeles	James E. Powell	10471
Los Angeles	Joshua Eckhaus	10699
Los Angeles	Lynn Marie Bagley	13546
Los Angeles	Matthew Lawrence Parks	13427
Los Angeles	Zil Brill	07157
Los Angeles	Yen Tan Pham	14290
Los Angeles	Arthur C. Schick, III	09498
Los Angeles	Dan W. White	04267
Los Angeles	Ramon J. Pacheco	04231
Los Angeles	Stephen J. Schneider	05992
Los Angeles	Sharon Czull Johnson	04529
Los Angeles	Janet Louise Elliot	06322
Los Angeles	S Johnson & Associates, Inc	05437
Los Angeles	Jeffrey P. Schramer	14964
Los Angeles	Robert Allen McLaughlin	16986
Los Angeles	Ralph Weymouth Parkhurst, III	16025
Los Angeles	Perry Lind McCoy, Jr	17181
Los Angeles	Gary Akito Mizumoto	10487
Los Angeles	Jeff M. Nelson	09137
Los Angeles	Robert David Bloom	13688
Los Angeles	Theodore A. O'Donnell	14651
Los Angeles	Abiodun Omolara Okunubi	17144
Los Angeles	Philip George Provenzale	09334
Los Angeles	Alonzo James Arcos	09857
Los Angeles	Pacheco International Corporation	04330
Los Angeles	Melissa L. Van Corbach	15137
Los Angeles	Angelo Pomyong Cho	21801
Los Angeles	US Express CHB, Inc	09134
Los Angeles	Ronald F. McDonald	06645
Los Angeles	Christine Wang	12708
Los Angeles	Jeffrey Kent Elledge	20854
Los Angeles	Margaret Edsall Huson	20546
Los Angeles	Stefanie Salazar	21084
Los Angeles	Sylvia Joan Pearson	10602
Los Angeles	Elayne C. Brenner Haddad	11744
Los Angeles	Jinny Jung	13185
Los Angeles	Judy Carey Cozad	12721
Los Angeles	Tory Stanford Erickson	12605
Los Angeles	Deborah Russell	13197
Los Angeles	Rebecca Bernard	13189
Los Angeles	Julio A. Hinojosa	15501
Miami	Robert M. Kossick, Jr	20308
Miami	Global Freight Services, Inc	12401
Miami	Customs Services International, Inc	13029
Miami	Ramon E. Perez	22785
Miami	Pedro Tronge	16002
Miami	Dulce M. Gomez	14957
Miami	James Creighton	06638
Miami	Mauree T. Talman	15522
Miami	Alan Albelo	13801
Miami	Troy D. Crago	20177
Miami	Raul Lahera	10344
Miami	Joyce C. Rodriguez	21130
Miami	Ricardo E. Rubio	06397
Miami	Thomas Kruszewski	21534
Miami	Gilbert A. Espinet	16810
Miami	Pascale Martelly	21393
Miami	Elia R. (Rodriquez) Cabrera	14302
Miami	Washington World Trading Corporation	17006
Miami	Carlos E. Serrano	21584
Miami	Grace Ann Martin	14286
Miami	RP Broker, Inc	09603
Miami	Lucia Novoa	16091
Miami	Arturo Marrero	13619
Miami	Jeffrey D. Bleyer	15806
Miami	Herbert Patterer	21079
Miami	Russell C. Vick, Jr	20382
Milwaukee	Eugene E. Van Garsse	04690
Milwaukee	Advantage Customs Brokers, LLC	20067
Milwaukee	Global Logistics Services, Inc	17029

License port	Licensee name	License No.
Milwaukee	Robert P. Voisin	17566
Milwaukee	Richard W. Gardenier	02995
Milwaukee	Allen G. Lemke	04615
Milwaukee	Jeffrey L. Keim	13696
Minneapolis	Amy M. Storms	17489
Minneapolis	Kirsten H. Dicks	21606
Minneapolis	Jacqueline J. Otto	14521
Minneapolis	Charlene K. Leach	16876
Minneapolis	Dayton D. Gilbert	17523
Minneapolis	John Michael Gleason	03867
Mobile	Raymond B. Green, Jr	10837
New Orleans	Nathan W. Rye	17305
New Orleans	Robert Gowan	16545
New Orleans	Rosa D. Simoneaux	05030
New Orleans	Janice J. Gilbert	17434
New Orleans	George Villanueva	05261
New Orleans	Alfred P. Mangan	05397
New Orleans	Jean W. Phebus	20028
New Orleans	Garrett Meynard	15662
New Orleans	Forward Air, Inc	20204
New Orleans	American Logistics International, Inc	16539
New Orleans	Jack E. Smith	12232
New Orleans	Martin M. Whitfield	10154
New York	A Burghart Shipping Company, Inc	05222
New York	Cargo Network International, Inc	15404
New York	Cynthia Lee Gilbert	10273
New York	Gerard William Harder	02996
New York	Sol Schoenberg	03585
New York	Vincent P. Ventura, Jr	14807
New York	Altair Freighting International, Inc	14663
New York	Douglas Paik	20083
New York	Guido Derlly	17562
New York	Robert P. Weinrib	06455
New York	Joseph N. Santarelli	06021
New York	Ernesto B. Pullenza	06398
New York	Robert J. Gannon	06179
New York	Robert E. Lee	12032
New York	Fischer-McCloskey, Inc	04608
New York	Marcelo Klapp	10177
New York	Andrea Clair Brooks	13258
New York	Christopher J. Dickerson	17225
New York	John J. Carr	20482
New York	Edward F. Woehr	18020
New York	Laina Jones	21156
New York	Eugene Song	21230
New York	Daniel Dong	21761
New York	Leo Liang Li	21763
New York	Richard Schweitzer	06196
New York	Joseph Mauri	02737
New York	Richard Lawson	12823
New York	Arthur S. Spiegel	04762
New York	Arthur F. Kingren	10703
New York	Complete Customs Clearance, Inc	10065
New York	Irwin Carmel	03838
New York	Seymour Haber	03841
New York	Carmine Dominick Tolli	03542
New York	Stephen J. Rozsas	04906
New York	John F. Wedded	05103
New York	James A. Hoban	05739
New York	Charles D. Johnson	05953
New York	J.J. Rousseau	06816
New York	Kim D. Bateman	07221
New York	Charles A. McCloskey	04106
New York	Nicholas J. DeFonte	03245
New York	Richard DeFuccio	03615
New York	KDB International Ltd	09179
New York	Keith Campbell	11489
New York	Ellen Michel	16308
New York	Debra Jean Levine	12667
New York	Steven Poulin	22381
New York	A & J Import Export Services, Inc	14662
New York	Delphine R. Mui	17207
New York	Bernard Louis Epstein	01870
New York	Nicholas DePasquale	02394

License port	Licensee name	License No.
New York	Elza Mitelman	17241
New York	Capital Customs Brokers, Inc	11526
New York	Peter R. Kurth	02859
New York	Irma Ruiz	16461
New York	Patrick Lam	16106
New York	Daniel Zupko	16285
Nogales	Edward Mario Bayze	12078
Nogales	Sandra Chambers Losskarn	12684
Nogales	Barry L. Lay, Jr	17196
Nogales	CB Lay Customs Brokers, Inc	11337
Nogales	Jose G. Varela	15617
Otay Mesa	Mary Beth Viruete	13576
Otay Mesa	Suzanne Rios	22859
Otay Mesa	Evan W. Bladh	12839
Otay Mesa	Frank R. Britton	02870
Otay Mesa	Elaine Dolores Morton	13280
Otay Mesa	Marrianne Handrus Kaarsberg	04619
Otay Mesa	Bennie H. Ketchum	04125
Philadelphia	Brian C. Johnson	21929
Philadelphia	Lynn M. Jones	21385
Philadelphia	Charles William Person	04156
Philadelphia	Richard C. Powley	11761
Philadelphia	Hanifa Shabazz	07676
Philadelphia	Maryanne Sweeney	16445
Philadelphia	Jeannie McClaning	17574
Philadelphia	Paul L. Greenlee	09903
Philadelphia	Dennis Rowles	07051
Philadelphia	Volker Simon	05123
Philadelphia	Vincent McHale	12880
Port Arthur	Gerard Arthur Becnel	03858
Portland, ME	Stewart J. Harmon	15242
Portland, OR	William J. Boyd	16900
Portland, OR	Edward M. Jones & Company	11882
Portland, OR	Peter Ryan Klason	14112
Portland, OR	Sarah Clarke Gibson	15252
Portland, OR	Jodi Watson	16100
Providence	Lisa Ann Fitch	12488
Providence	Cheryl A. Simino-Dewolf	14545
San Diego	David Wells	16253
San Diego	Taeheum Yun	14985
San Diego	Susan Wittering	14311
San Diego	Leia Darett	17584
San Diego	Patti Hodson	15017
San Diego	Esteban Zavala	20439
San Diego	George LeBaron, III	20913
San Diego	Dinorah Plascencia	20882
San Francisco	James Carl Sanetra	15852
San Francisco	Gwendolyn Hasse	15843
San Francisco	E.R. Gallagher	07022
San Francisco	Miguel Roman Padilla	06496
San Francisco	James I. McLeaish	12080
San Francisco	Carole Wilkinson	07635
San Francisco	James A. Moore	22675
San Francisco	Lisa Duggins-Rogers	21567
San Francisco	Inexco, Inc	07699
San Francisco	Carolyn Louise Kubli	04399
San Francisco	Anthony W. Staton	13540
San Francisco	Lawrence George Johnson	09413
San Francisco	Vincent Lacson Baldemor	17403
San Francisco	Arnis Kapostins	04000
San Francisco	Larry Clark Clopp	05559
San Francisco	Lisa Mae Quock	20378
San Francisco	Clifford Richard Colvin	07734
San Francisco	Theresa A. Dutton	10251
San Francisco	Ewa Genowfa Sederstrom	13800
San Francisco	Mooyung Choi	10249
St. Albans	Michael Fortuna	17316
St. Albans	N. Roger Poulin	04284
Tampa	Sandra K. Chestnut	16412
Tampa	H&H International, Inc	22098
Tampa	Joyce F. Mones	11211
Tampa	Kerry S. Holstein	16006
Tampa	Susan L. (Dudley) McLane	13649
Tampa	Nancy L. Orihuela	10739

License port	Licensee name	License No.
Washington, DC	Josette Gwilliam	05781
Washington, DC	Brian Carl Sullivan	21599
Washington, DC	Donna L. Twyford	16764
Washington, DC	Patricia M. Rinker	11578
Washington, DC	Andrew T. Rosulek	22502

Dated: July 18, 2006.

Jayson P. Ahern,

Assistant Commissioner, Office of Field Operations.

[FR Doc. E6–11781 Filed 7–24–06; 8:45 am]

BILLING CODE 9111–14–P

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

[Docket No. FR–5041–N–25]

Notice of Proposed Information Collection: Comment Request; Certified Eligibility for Adjustments for Damage or Neglect

AGENCY: Office of the Assistant Secretary for Housing-Federal Housing Commissioner, HUD.

ACTION: Notice.

SUMMARY: The proposed information collection requirement described below will be submitted to the Office of Management and Budget (OMB) for review, as required by the Paperwork Reduction Act. The Department is soliciting public comments on the subject proposal.

DATES: *Comments Due Date:* September 25, 2006.

ADDRESSES: Interested persons are invited to submit comments regarding this proposal. Comments should refer to the proposal by name and/or OMB Control Number and should be sent to: Lillian Deitzer, Reports Management Officer, Department of Housing and Urban Development, 451 7th Street, SW., L'Enfant Plaza Building, Room 8003, Washington, DC 20410 or *Lillian_Deitzer@hud.gov.*

FOR FURTHER INFORMATION CONTACT: Laurie Maggiano, Acting Director, Office of Single Family Asset Management, Department of Housing and Urban Development, 451 7th Street, SW., Washington, DC 20410, telephone (202) 708–1672 (this is not a toll free number) for copies of the proposed forms and other available information.

SUPPLEMENTARY INFORMATION: The Department is submitting the proposed information collection to OMB for review, as required by the Paperwork Reduction Act of 1995 (44 U.S.C. Chapter 35, as amended).

This Notice is soliciting comments from members of the public and affected agencies concerning the proposed collection of information to: (1) Evaluate whether the proposed collection is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility; (2) Evaluate the accuracy of the agency's estimate of the burden of the proposed collection of information; (3) Enhance the quality, utility, and clarity of the information to be collected; and (4) Minimize the burden of the collection of information on those who are to respond; including the use of appropriate automated collection techniques or other forms of information technology, e.g., permitting electronic submission of responses.

This Notice also lists the following information:

Title of Proposal: Certified Eligibility for Adjustments for Damage or Neglect.

OMB Control Number, if applicable: 2502–0349.

Description of the need for the information and proposed use: This information collection is needed to permit a one-time certification by mortgagees that they have acquired hazard insurance acceptable to HUD at a reasonable rate. The information collection will also permit the mortgagee to convey fire damaged properties without a surcharge to the claim.

Agency form numbers, if applicable: None.

Estimation of the total numbers of hours needed to prepare the information collection including number of respondents, frequency of response, and hours of response: The estimated total number of hours needed to prepare the information collection is 25; the number of respondents is 275 generating 50 annual responses; the frequency of response is on occasion; and the estimated time needed to prepare the response is 30 minutes.

Status of the proposed information collection: Extension of a currently approved collection.

Authority: The Paperwork Reduction Act of 1995, 44 U.S.C., Chapter 35, as amended.

Dated: July 18, 2006.

Frank L. Davis,

General Deputy Assistant Secretary for Housing-Deputy Federal Housing Commissioner.

[FR Doc. 06–6441 Filed 7–24–06; 8:45 am]

BILLING CODE 4210–67–M

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

[Docket No. FR–5041–N–27]

Notice of Proposed Information Collection: Comment Request; Multifamily Contractor's/Mortgagor's Cost Breakdowns and Certifications

AGENCY: Office of the Assistant Secretary for Housing-Federal Housing Commissioner, HUD.

ACTION: Notice.

SUMMARY: The proposed information collection requirement described below will be submitted to the Office of Management and Budget (OMB) for review, as required by the Paperwork Reduction Act. The Department is soliciting public comments on the subject proposal.

DATES: September 25, 2006.

ADDRESSES: Interested persons are invited to submit comments regarding this proposal. Comments should refer to the proposal by name and/or OMB Control Number and should be sent to: Lillian Deitzer, Reports Management Officer, Department of Housing and Urban Development, 451 7th Street, SW., L'Enfant Plaza Building, Room 8003, Washington, DC 20410 or *Lillian_Deitzer@hud.gov.*

FOR FURTHER INFORMATION CONTACT: Joe Malloy, Acting Director, Office of Multifamily Development, Department of Housing and Urban Development, 451 7th Street, SW., Washington, DC 20410, telephone (202) 708–1142 (this is not a toll free number) for copies of the proposed forms and other available information.

SUPPLEMENTARY INFORMATION: The Department is submitting the proposed information collection to OMB for review, as required by the Paperwork Reduction Act of 1995 (44 U.S.C. Chapter 35, as amended).

This Notice is soliciting comments from members of the public and affected agencies concerning the proposed collection of information to: (1) Evaluate whether the proposed collection is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility; (2) Evaluate the accuracy of the agency's estimate of the burden of the proposed collection of information; (3) Enhance the quality, utility, and clarity of the information to be collected; and (4) Minimize the burden of the collection of information on those who are to respond; including the use of appropriate automated collection techniques or other forms of information technology, e.g., permitting electronic submission of responses.

This Notice also lists the following information:

Title of Proposal: Multifamily Contractor's/Mortgagor's Cost Breakdown and Certifications.

OMB Control Number, if applicable: 2502–0044.

Description of the need for the information and proposed use: Contractors use the form HUD–2328 to establish a schedule of values of construction items on which the monthly advances or mortgage proceeds are based. Contractors use the form HUD–92330–A to convey actual construction costs in a standardized format of cost certification. In addition to assuring that the mortgage proceeds have not been used for purposes other than construction costs, HUD–92330–A further protects the interest of the Department by directly monitoring the accuracy of the itemized trades on form HUD–2328. This form also serves as project data to keep Field Office cost data banks and cost estimates current and accurate. HUD–2205–A is used to certify the actual costs of acquisition or refinancing of projects insured under the Section 223(f) program.

Agency form numbers, if applicable: HUD–2205–A, HUD–2328, and HUD–92330–A.

Estimation of the total numbers of hours needed to prepare the information collection including number of respondents, frequency of response, and hours of response: The estimated number of burden hours needed to prepare the information collection is 3,680; the number of respondents is 675 generating approximately 675 annual responses; the frequency of response is on occasion; and the estimated time needed to prepare the response varies from 4 hours to 8 hours.

Status of the proposed information collection: Extension of a currently approved collection.

Authority: The Paperwork Reduction Act of 1995, 44 U.S.C., Chapter 35, as amended.

Dated: July 19, 2006.

Frank L. Davis,

General Deputy Assistant Secretary for Housing-Deputy Federal Housing Commissioner.

[FR Doc. 06–6442 Filed 7–24–06; 8:45 am]

BILLING CODE 4210–27–M

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

[Docket No. FR–4950–FA–16]

Announcement of Funding Awards for the Indian Community Development Block Grant Program for Fiscal Year 2005

AGENCY: Office of Native American Programs, Office of Public and Indian Housing, HUD.

ACTION: Announcement of funding awards.

SUMMARY: In accordance with Section 102(a)(4)(C) of the Department of Housing and Urban Development Reform Act of 1989, this announcement notifies the public of funding decisions made by the Department in a competition for funding under the Fiscal Year (FY) 2005 Notice of Funding Availability (NOFA) for the Indian Community Development Block Grant (ICDBG) Program. This announcement contains the consolidated names and addresses of this year's award recipients under the ICDBG.

FOR FURTHER INFORMATION CONTACT: For questions concerning the Indian Community Development Block Grant Program awards, contact the Area Office of Native American Programs serving your area, or Rochelle McKinney, Office of Native Programs, Washington, DC Office, 451 Seventh Street, SW., Room 4126, Washington, DC 20410, telephone (202) 401–7914. Hearing- or speech-impaired individuals may access this number via TTY by calling the toll-free Federal Information Relay Service at (800) 877–8339.

SUPPLEMENTARY INFORMATION: This program provides grants to Indian tribes and Alaska Native Villages to develop viable Indian and Alaska Native communities, including the creation of decent housing, suitable living environments, and economic opportunities primarily for persons with low and moderate incomes as defined in 24 CFR 1003.4.

The FY2005 awards announced in this Notice were selected for funding in a competition announced in a NOFA published in the **Federal Register** on March 21, 2005 (70 FR 13654). Applications were scored and selected for funding based on the selection criteria in that Notice and Area Office of Native American Programs (ONAP) geographic jurisdictional competitions.

The amount appropriated in FY2005 to fund the ICDBG was $68,427,300. Four million of this amount was retained to fund imminent threat grants in FY2005. In addition, a total of $2,079,417 in carryover funds from prior years was also available. The allocations for the Area ONAP geographic jurisdictions, including carryover, are as follows:

Eastern/Woodlands	$ 7,918,000
Southern Plains	14,200,775
Northern Plains	9,210,998
Southwest	24,225,592
Northwest	3,920,870
Alaska	7,030,482
Total	$66,506,717

In accordance with Section 102(a)(4)(C) of the Department of Housing and Urban Development Reform Act of 1989 (103 Stat. 1987, 42 U.S.C. 3545), the Department is publishing the names and addresses of awardees, as well as the amounts of the 91 awards made under the various regional competitions in Appendix A to this document.

Dated: July 17, 2006.

Orlando J. Cabrera,

Assistant Secretary for Public and Indian Housing.

Appendix A–Indian Community Development Block Grant Awards for Fiscal Year 2005

Cherokee Nation
Chad Smith
Principal Chief
PO Box 948
Tahlequah, OK 74465
Phone: (918) 456–0671
Grant Award: $800,000
Activity: Microenterprise Provide 61 Loans/ Create 70 Full Time Jobs

Chickasaw Nation
Bill Anoatubby
Governor
P.O. Box 1548
Ada, OK 74821
Phone: (580) 436–2603
Grant Award: $800,000
Activity: Public Facility Wellness Center

Choctaw Nation
Gregory E. Pyle
Chief
P.O. Drawer 1210
Durant, OK 74702
Phone: (580) 924–8280
Grant Award: $800,000
Activity: Public Facility Social Services Complex

Citizen Potawatomi Nation

John A. Barrett
Chairperson
1601 South Gordon Cooper Drive
Shawnee, OK 74801
Phone: (405) 275–3121
Grant: $800,000
Activity: Public Facility
Soaring Eagles Firelodge

Eastern Shawnee Tribe
Charles Enyart
Chief
P.O. Box 350
Seneca, MO 64865
Phone: (918) 666–2435
Grant: $800,000
Activity: Public Facility
Community Services Building

Kaw Nation
Guy Munroe
Chairperson
P.O. Box 50
Kaw City, OK 74641
Phone: (580) 269–2552
Grant: $617,745
Activity: Public Facility
Braman Water Project

Miami Tribe
Floyd Leonard
Chief
P.O. Box 1326
Miami, OK 74355
Phone: (918) 542–1445
Grant: $800,000
Activity: Public Facility Assisted Living Center

Muscogee (Creek)
Nation Principal
A. D. Ellis
Chief
P.O. Box 580
Okmulgee, OK 74447
Phone: (918) 756–8700
Grant: $800,000
Activity: Public Facility Multi Purpose Center

Osage Tribe
Jim Gray
Principal Chief
627 Grandview Avenue
Pawhuska, OK 74056
Phone: (918) 287–1128
Grant: $800,000
Activity: Public Facility Health Center

Otoe-Missouria Tribe
C. Michael Harwell
Tribal Chairman
8151 Highway 177
Red Rock, OK 74651–0348
Phone: (580) 723–4466
Grant: $800,000
Activity: Public Facility Community Services Building

Pawnee Nation
George Howell
President
P.O. Box 470
Pawnee, OK 74058
Phone: (918) 762–3621
Grant: $800,000
Activity: Public Facility
Rehab Historic Building

Peoria Tribe
John Froman
Chief
P.O. Box 1527
Miami, OK 74355
Phone: (918) 540–2535
Grant: $800,000
Activity: Public Facility Tribal Programs Building

Ponca Tribe
Dwight BuffaloHead
Chairperson
20 White Eagle Dr.
Ponca City, OK 74601
Phone: (580) 762–8104
Grant: $793,448
Activity: Housing Rehabilitation Rehab 18 Homes

Seneca-Cayuga Tribe
Paul Spicer
Chief
P.O. Box 1283
Miami, OK 74355
Phone: (918) 542–6609
Grant: $800,000
Activity: Public Facility Utility/Public Works Facility

Tonkawa Tribe
Carl Martin
President
1 Rush Buffalo Road
Tonkawa, OK 74653
Phone: (580) 628–2561
Grant: $794,882
Activity: Public Facility Wellness Center

United Keetoowah
Band of Cherokee Indians
George Wickliffe
Chief
P.O. Box 746
Tahlequah, OK 74465–0746
Phone: (918) 456–5491
Grant: $800,000
Activity: Public Facility Elderly Center

Wichita & Affiliated Tribes
Gary McAdams
President
P.O. Box 729
Anadarko, OK 73005
Phone:(405) 247–2425
Grant: $800,000
Activity: Public Facility Food Distribution Center

Wyandotte Tribe
Leaford Bearskin
Chief
P.O. Box 250
Wyandotte, OK 74370
Phone: (918) 678–2297
Grant: $794,700
Activity: Public Facility Childcare Facility Improvements

Coquille Indian Tribe
Christopher K. Tanner
Grant Writer
P.O. Box 783
North Bend, OR 97459
Phone: (541) 756–0904
Grant: $421,354
Activity: Public Facility—Infrastructure Broadband Technology

Squaxin Island Tribe
Raymond Peters
Executive Director
10 SE Squaxin Lane
Shelton, WA 98584
Phone: (360) 426–9781
Grant: $500,000
Activity: Public Facility Counseling and Cultural Center

Upper Skagit Tribe
Marilyn M. Scott
Chairperson
35944 Community Plaza Way
Sedro Woolley, WA 98284
Phone: (360) 854–7000
Grant: $500,000
Activity: Public Facility Infrastructure and Supplemental Water Tower

Coeur d'Alene Tribe
Cielo I. Gibson
Executive Director
P.O. Box 408
Plummer, ID 83854
Phone: (208) 686–1927
Grant: $500,000
Activity: Housing Rehabilitation Rehab of 199 rental units

Nooksack Tribe
Narcisco Cunanan
Tribal Chairman
4979 Mt. Baker Highway
Deming, WA 98244
Phone: (360) 592–5176
Grant: $500,000
Activity: Public Facility-Systems Infrastructure water system septic

Jamestown S'Kallam Tribe
W. Ron Allen
Tribal Chairman
1033 Old Blyn Highway
Sequim, WA 98382
Phone: (360) 683–1109
Grant: $500,000
Activity: Public Facility Medical Center

Grand Ronde Tribe
Cheryle Ann Kennedy
Tribal Council Chairwoman
9615 Grand Ronde Road
Grand Ronde, OR 97347
Phone: (503) 879–2304
Grant: $500,000
Activity: Public Facility Recreation Facility

Confederated Tribes of
Siletz Indian of Oregon
Brenda Bremner
General Manager
291 SE Swan DriveSiletz, OR 97380
Phone: (541) 444–2532
Grant: $499,516
Activity: Public Facility Tribal Diabetes/ Fitness Center

Ak-Chin Indian Community
Anita Avila
Contract and Grants Specialist
42507 W. Peters & Nall Rd.
Maricopa, AZ 85239
Phone: (520) 568–1064
Grant: $605,000
Activity: Public Facility Education Center

Bear River Band of
Rohnerville Rancheria
Bruce Merson
Housing Director
27 Bear River Drive
Loleta, CA 95551
Phone: (707) 733–1900
Grant: $605,000
Activity: Housing Construction Bassayo Village—Phase IV

Chemehuevi Indian Tribe

Bill Cox
Tribal Planner
P.O. Box 1976
Havasu Lake, CA 92363
Phone: (760) 858–4301
Grant: $605,000
Activity: Public Facility Family Service Center

Colorado River Residential Management Corp.
Frederick Ench
Tribal Planner
Route 1, Box 23–B
Parker, AZ 85344
Phone: (928) 669–6409
Grant: $825,000
Activity: Juvenile Detention and Rehabilitation Center

Dry Creek Rancheria Band of Pomo Indians
Jeanne Baker
Contract and Grants Manager
P.O. Box 607
Geyserville, CA 95441
Phone: (707) 473–2178
Grant: $605,000
Activity: Public Facilities Multi-Purpose Center

Gila River Pima-Maricopa Indian Community
Gary Nelson
Project Manager
P.O. Box 97
Sacaton, AZ 85247
Phone: (520) 564–6080
Grant: $2,750,000
Activity: Public Facility Fire Station

Havasupai Indian Tribe
Thomas Siyuja
Chairman
P.O. Box 10
Supai, AZ 86435
Phone: (928) 448–2731
Grant: $605,000
Activity: Public Facility Community Plaza

Hoopa Valley Tribe
Marcellene Norton
Education Director
P.O. Box 1348
Hoopa, CA 95546
Phone: (530) 625–4413
Grant: $825,000
Activity: Public Facility Early Childhood Education Facility

Hopi Tribe
Belma Navakuku
Business Enterprise Development Manager
1 Main St., P.O. Box 123
Kykotsmovi, AZ 86039
Phone: (928) 934–3244
Grant: $1,285,000
Activity: Economic Development Travel Center

Hualapai Indian Tribe
Salena Siyuja
Grants Administrator
P.O. Box 179
Peach Springs, AZ 86434
Phone: (928) 769–2216
Grant: $825,000
Activity: Public Facility Tribal Cultural Center

MACT Health Board, Inc.
Patty Aycock
Administrative Manager
P.O. Box 2080
Tuolumne, CA 95379
Phone: (209) 928–4277
Grant: $1,810,000
Activity: Public Facility Indian Health Center

Navajo Nation
Chavez John
CDBG Program Supervisor
P.O. Box 2365
Window Rock, AZ 86515
Phone: (928) 871–6539
Grant: $5,415,591
Activity: Public Facility Improvement Power Line Extensions

North Fork Rancheria of Pomo Indians
William Hussmann
Executive Director
P.O. Box 728
North Fork, CA 93643
Phone: (559) 887–7360
Grant: $564,302
Activity: Public Facility Youth Center

Pueblo of Nambe
Debbie Reynolds
Operations Director
Route 1, Box 117–BB
Santa Fe, NM 87506
Phone: (505) 455–0158
Grant: $573,860
Activity: Housing Rehabilitation Rehab 30 homes

Pueblo of Pojoaque
Alyn Martinez
Housing Director
Street 1, 16 Viarrial Street
Santa Fe, NM 87506
Phone: (505) 455–3383
Grant: $605,000
Activity: New Housing Construction Build 20 new units

Pueblo of San Felipe
Issac Perez
Housing Director
P.O. Box 4339
Pueblo of San Felipe, NM 87001
Phone: (505) 867–3381
Grant: $825,000
Activity: Housing Rehabilitation Rehab of 20 homes

Pueblo of San Ildefonso
Scott Beckmann
Development Director
Route 5, Box 315A
Santa Fe, NM 87501
Phone: (505) 455–7973
Grant: $605,000
Activity: Housing Rehabilitation Rehab of 28 homes

Pueblo of San Juan
Tomasita Duran
Executive Director
P.O. Box 1099
San Juan Pueblo, NM 87566
Phone: (505) 852–0189
Grant: $246,166
Activity: Housing Rehabilitation Rehab of 18 homes

Pueblo of Zuni
Andrew Othole
Director of Planning and Development
P.O. Box 339
Zuni, NM 87327
Phone: (505) 782–3054
Grant: $615,673
Activity: Public Facility Food Distribution Center

Reno-Sparks Indian Colony
Arlan Melendez
Chairman
98 Colony Road
Reno, NV 89502
Phone: (775) 329–2936
Grant: $605,000
Activity: Public Facility Health Center

San Carlos Apache Tribe
Charles Russell
Deputy Planning Director
P.O. Box 0
San Carlos, AZ 85550
Phone: (928) 475–2331
Grant: $400,000
Activity: Housing Rehabilitation Rehab of 20 units

Susanville Indian Rancheria
Stacy Dixon
Chairman
745 Joaquin Street
Susanville, CA 96130
Phone: (530) 257–6264
Grant: $580,000
Activity: Housing Construction 12 new units

Wahoe Tribe of Nevada & California
Raymond Gonzales
Executive Director
919 Highway 395 South
Gardnerville, NV 89410
Phone: (775) 265–2410
Grant: $605,000
Activity: Public Facility Community Complex

Yerington Paiute Tribe
Lee Shaw
Development Coordinator
171 Campbell Lane
Yerington, NV 89447
Phone: (775) 463–2225
Grant: $605,000
Activity: Housing Rehabilitation Phase III

Yurok Tribe
Peggy O'Neill
Project Director
P.O. Box 1027
Klamath, CA 95548
Phone: (707) 482–1366
Grant: $605,000
Activity: Public Facility Fitness Center

Aroostook Micmacs
William Phillips
Tribal Chief
#7 Northern Road
Presque Isle, ME 04769
Phone: (508) 645–2711
Grant: $500,000
Activity: Housing Rehab Rehab 16 Units

Bay Mills Indian Community
Jeffrey D. Parker
President
Route 1
Brimley, MI 49715
Phone: (906) 248–5524
Grant: $500,000
Activity: Public Facility Community Center

Eastern Band of Cherokees
Michelle Hicks
Principal Chief

PO Box 455
Cherokee, NC 28719
Phone: (828) 497–7007
Grant: $500,000
Activity: Public Facility Community Facility

Grand Traverse Band of
Ottawa & Chippewa
Robert Kewaygoshkum
Chairman
2605 N West Bay Shore Rd.
Suttons Bay, MI 49682
Phone: (231) 271–3538
Grant: $500,000
Activity: Public Facility Tribal Museum and Cultural Center

Hannahville Indian Community
Kenneth Meshigaud
Chairperson
N14911 Hannahville B1 Rd.
Wilson, MI 49896
Phone: (906) 466–2342
Grant: $500,000
Activity: Public Facility Cultural Center

Ho-Chunk Nation
George Lewis
President
P.O. Box 667
Black River Falls, WI 54615
Phone: (715) 284–9343
Grant: $500,000
Activity: Public Facility Sewer Infrastructure

Keweenaw Bay Indian Community
Susan LaFernier
President
107 Beartown Rd.
Baraga, MI 49908
Phone: (906) 353–6623
Grant: $500,000
Activity: Public Facility Senior Center

Lac du Flambeau Band of Chippewa
Victoria A. Doud
Chairperson
P.O. Box 67
Lac du Flambeau, WI 54538
Phone: (715) 588–3303
Grant: $500,000
Activity: Public Facility Health Center

Leech Lake Band of Ojibwe
George Goggleye Jr.
Chairman
Route 3, Box 100
Cass Lake, MN 56633
Phone: (218) 335–8200
Grant: $500,000
Activity: Public Facility Rehab Community Center

Menominee Indian Tribe
Michael Chapman
Tribal Chairman
P.O. Box 910
Keshena, WI 54135
Phone: (715) 799–5114
Grant: $500,000
Activity: Housing Rehabilitation Rehab 57 Homes

Mille Lacs Band of Ojibwe
Melanie Benjamin
Chief Executive
43408 Odena Dr.
Onamia, MN 56459
Phone: (320) 532–4181
Grant: $318,000
Activity: Public Facility Rehab of 40 Homes

Narragansett Indian
Department of Housing
Matthew Thomas
Chief Sachem
PO Box 268
Charleston, RI 02813
Phone: (401) 364–1100
Grant: $500,000
Activity: Public Facility Health Center Expansion

Nottawaseppi Huron
Band of Potawatomi, INC.
Laura Spur
Chairperson
2221 1½ Mile Rd.
Fulton, MI 49052
Phone: (269) 869–8107
Grant: $500,000
Activity: Public Facility Health Center

Confederated Salish and
Kootenai Tribes
D. Fred Matt
Tribal Chairperson
P.O. Box 278
Pablo, MT 59855
Phone: (406) 675–4491
Grant: $828,287
Activity: Housing Rehabilitation Rehab of 23 Homes

Crow Tribe of Indians
Carl Venne
Tribal Chairperson
P.O. Box 159
Crow Agency, MT 59022
Phone: (406) 638–3717
Grant: $900,000
Activity: Housing Rehabilitation Rehab of 30 Homes

Ho-Chunk Community
Development Corporation
Judi Meyer-Ogden
Executive Director
P.O. Box 264
Walthill, NE 68067
Phone: (402) 846–5353
Grant: $900,000
Activity: Public Facility Swimming Pool

The Lakota Fund, Inc.
Dowell Caselli-Smith
Executive Director
P.O Box 340
Kyle, SD 57752
Phone: (605) 455–2500
Grant: $899,956
Activity: Micro-Enterprise Expansion of local Micro-Enterprises

Lower Brule Sioux Tribe
Michael B. Jandreau
Tribal Chairperson
P.O Box 183
Lower Brule, SD 57548
Phone: (605) 473–5561
Grant: $900,000
Activity: Housing Rehabilitation Rehab of 47 Homes

Paiute Indian Tribe of Utah
Lora E. Tom
Tribal Chairperson
440 North Paiute Drive
Cedar City, UT 84720
Phone: (435) 586–7388
Grant: $900,000
Activity: Public Facility Construction of Senior/Youth Activity Center

Santee Sioux Nation
Roger Trudell
Tribal Chairperson
108 Spirit Lake Avenue
Niobrara, NE 68760
Phone: (402) 857–2772
Grant: $672,711
Activity: Housing Rehabilitation Rehab of 73 Homes

Sisseton Wahpeton Oyate
Jerry Flute
Tribal Chairperson
P.O. Box 509
Agency Village, SD 57262
Phone: (605) 698–3911
Grant: $900,000
Activity: Public Facility Construction of Elderly Center

Spirit Lake Tribe
Myra Pearson
Tribal Chairperson
P.O. Box 359
Fort Totten, ND 58335
Phone: (701) 766–4131
Grant: $510,000
Activity: Housing Rehabilitation Rehab of 14 Homes

Turtle Mountain Band of
Chippewa Indians
Ken Davis
Tribal Chairperson
P.O. Box 900
Belcourt, ND 58316
Phone: (701) 477–2639
Grant: $900,000
Activity: Housing Rehabilitation Rehab of 15 Homes

Levelock Village Council
Howard Nelson
President
P.O. Box 70
Levelock, AK 99625
Phone: (907) 287–3000
Grant: $500,000
Activity: Housing Construction Construct 6 Single Family Homes

Venetie Village Council
Eddie Frank
1st Chief
P.O. Box 81119
Venetie, AK 99781
Phone: (907) 849–8212
Grant: $468,000
Activity: Housing Construction Construct 3 New Homes

Chilkoot Indian Association
Gregory Stuckey
Tribal Administrator
P.O. Box 490
Haines, AK 99827
Phone: (907) 766–2323
Grant: $500,000
Activity: Housing Rehabilitation Rehab 38 Homes

Pilot Point Tribal Council
Victor Seybert
President
P.O. Box 449
Pilot Point, AK 99649
Phone: (907) 797–2208
Grant: $500,000
Activity: Public Facility Health Clinic

Nondalton Tribal Council
Jak Hobson
President

P.O. Box 49
Nondalton, AK 99640
Phone: (907) 294–2234
Grant: $313,784
Activity: Public Facility Health Clinic

Arctic Village Council
Marjorie Gommill
1st Chief
P.O. Box 69
Arctic Village, AK 99722
Phone: (907) 587–5523
Grant: $400,000
Activity: Housing Construction Construct 4 New Homes

Gakona Village Council
Darin Gene
President
P.O. Box 102
Gakona Village, AK 99586
Phone: (907) 822–5777
Grant: $499,789
Activity: Public Facility Multi-Purpose Service Center

Native Village of Deering
Emerson Moto
President
P.O. Box 50089
Deering, AK 99736
Phone: (907) 363–2138
Grants: $500,000
Activity: Housing Rehabilitation Rehab of 15 to 20 Homes

Nanwalek IRA Council
Emilie Swenning
1st Chief
P.O. Box 8065
Nanwalek, AK 99603–6665
Phone: (907) 281–2274
Grant: $500,000
Activity: Public Facility New Health Services Center

Twin Hills Village Council
George Pleasant
President
P.O. Box TWA
Twin Hills, AK 99576–8996
Phone: (907) 525–4821
Grant: $276,000
Activity: Public Facility Health Clinic

Kipnuk Village Council
Charlie Paul
Chief
P.O. Box 57
Kipnuk, AK 99614–0057
Phone: (907) 896–5515
Grant: $198,215
Activity: Public Facility Health Clinic

Kotlik Traditional Council
Reynold Okitkun
President
P.O. Box 20210
Kotlik, AK 99620
Phone: (907) 899–4326
Grant: $198,215
Activity: Public Facility Health Clinic

Marshall Traditional Council
Lynn Chambers
Grant Writer
P.O. Box 110
Marshall, AK 99585
Phone: (907) 243–8212
Grant: $500,000
Activity: Public Facility Water/Sewer Expansion

Ohogamiut Traditional Council
Lynn Chambers
Grant Writer
P.O. Box 49
Marshall, AK 99585
Phone: (907) 243–8212
Grant: $500,000
Activity: Public Facility Water/Sewer Expansion

Sitka Tribe of Alaska
Lawrence Widmark
Chairman
465 Katlian Street
Sitka, AK 99835
Phone: (907) 747–3207
Grant: $480,000
Activity: Land Acquisition to Construct New Housing

Organized Village of Kwethluk
Martin Andrew
President
P.O. Box 129
Kwethluk, AK 99621–0129
Phone: (907) 757–6714
Grant: $196,479
Activity: Public Facility Health Clinic

Tribal Government of
St. Paul Island
Richard Zacharof
President
P.O. Box 86
St. Paul Island, AK 99660
Phone: (907) 546–3221
Grant: $500,000
Activity: Housing Rehabilitation Rehab 10 or more existing homes.

[FR Doc. E6–11816 Filed 7–24–06; 8:45 am]
BILLING CODE 4210–67–P

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

Receipt of Five Applications for Incidental Take Permits for Construction of Single-Family Homes in Brevard County, FL

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Notice.

SUMMARY: Robert Catlow, Ali Markieh, Dustin Stone, Pete Knudsen, and Peter Intoccia (Applicants) each request an incidental take permit (ITP) pursuant to section 10(a)(1)(B) of the Endangered Species Act of 1973, as amended (Act). The requested term for each is one year, except for Markieh who requests a two-year permit term. The Applicants anticipate taking a total of about 1.21 acres of Florida scrub-jay (*Aphelocoma coerulescens*)(scrub-jay) foraging and sheltering habitat incidental to lot preparation for the construction of five single-family homes and supporting infrastructure in Brevard County, Florida (Project). The destruction of 1.21 acres of foraging and sheltering habitat is expected to result in the take of three families of scrub-jays. The Applicants' Habitat Conservation Plans (HCPs) describe the mitigation and minimization measures proposed to address the effects of the Projects to the Florida scrub-jay. These measures are outlined in the **SUPPLEMENTARY INFORMATION** section below.

DATES: Written comments on the ITP applications and HCPs should be sent to the Service's Regional Office (see **ADDRESSES**) and should be received on or before August 24, 2006.

ADDRESSES: Persons wishing to review the applications and HCPs may obtain a copy by writing the Service's Southeast Regional Office, Atlanta, Georgia. Please reference permit number TE111876–0, for Catlow, number TE111609–0, for Markieh, number TE111610–0, for Stone, number TE111875–0, for Knudsen, and number TE111608–0, for Intoccia in such requests. Documents will also be available for public inspection by appointment during normal business hours at the Regional Office, 1875 Century Boulevard, Suite 200, Atlanta, Georgia 30345 (Attn: Endangered Species Permits), or Field Supervisor, U.S. Fish and Wildlife Service, 6620 Southpoint Drive South, Suite 310, Jacksonville, Florida 32216–0912.

FOR FURTHER INFORMATION CONTACT: David Dell, Regional HCP Coordinator, (see **ADDRESSES** above), telephone: 404/679–7313, facsimile: 404/679–7081; or Erin Gawera, Fish and Wildlife Biologist, Jacksonville Field Office, Jacksonville, Florida (see **ADDRESSES** above), telephone: 904/232–2580, ext. 121.

SUPPLEMENTARY INFORMATION: If you wish to comment, you may submit comments by any one of several methods. Please reference permit number TE111876–0, for Catlow, number TE111609–0, for Markieh, number TE111610–0, for Stone, number TE111875–0, for Knudsen, and number TE111608–0, for Intoccia in such requests. You may mail comments to the Service's Regional Office (see **ADDRESSES**). You may also comment via the Internet to ''*david_dell@fws.gov*''. Please include your name and return address in your Internet message. If you do not receive a confirmation from us that we have received your Internet message, contact us directly at either telephone number listed below (see **FURTHER INFORMATION**). Finally, you may hand deliver comments to either Service office listed below (see **ADDRESSES**). Our practice is to make comments, including names and home addresses of respondents, available for public review during regular business hours.

Individual respondents may request that we withhold their home address from the administrative record. We will honor such requests to the extent allowable by law. There may also be other circumstances in which we would withhold from the administrative record a respondent's identity, as allowable by law. If you wish us to withhold your name and address, you must state this prominently at the beginning of your comments. We will not, however, consider anonymous comments. We will make all submissions from organizations or businesses, and from individuals identifying themselves as representatives or officials of organizations or businesses, available for public inspection in their entirety.

The Florida scrub-jay (scrub-jay) is geographically isolated from other species of scrub-jays found in Mexico and the western United States. The scrub-jay is found exclusively in peninsular Florida and is restricted to xeric uplands (predominately in oak-dominated scrub). Increasing urban and agricultural development has resulted in habitat loss and fragmentation which has adversely affected the distribution and numbers of scrub-jays. The total estimated population is between 7,000 and 11,000 individuals.

Residential construction for Catlow would take place within section 05, Township 29 South, Range 37 East, Palm Bay, Brevard County, Florida on lot 17, Block 307. Residential construction for Markieh would take place within section 05, Township 29 South, Range 37 East, Palm Bay, Brevard County, Florida on lot 01, Block 357. Residential construction for Stone would take place within Section 05, Township 29 South, Range 37 East, Palm Bay, Brevard County, Florida on Lot 15, Block 352. Residential construction for Knudsen would take place within section 05, Township 29 South, Range 37 East, Palm Bay, Brevard County, Florida on Lot 06, Block 349. Residential construction for Intoccia would take place within Section 16, Township 29 South, Range 37 East, Palm Bay, Brevard County, Florida on Lot 7, Block 793. Each of these lots are within 438 feet of locations where scrub-jays were sighted during surveys for this species from 1999 to 2003.

Scrub-jays using the subject residential lots and adjacent properties are part of a larger complex of scrub-jays located in a matrix of urban and natural settings in areas of southern Brevard and northern Indian River counties. Within the City of Palm Bay, 20 families of scrub-jays persist in habitat fragmented by residential development. Scrub-jays in urban areas are particularly vulnerable and typically do not successfully produce young that survive to adulthood. Persistent urban growth in this area will likely result in further reductions in the amount of suitable habitat for scrub-jays. Increasing urban pressures are also likely to result in the continued degradation of scrub-jay habitat as fire exclusion slowly results in vegetative overgrowth. Thus, over the long-term, scrub-jays within the City of Palm Bay are unlikely to persist, and conservation efforts for this species should target acquisition and management of large parcels of land outside the direct influence of urbanization.

The lots combined encompass about 1.21 acres and the footprint of the homes, infrastructure, and landscaping preclude retention of scrub-jay habitat. On-site minimization may not be a biologically viable alternative due to increasing negative demographic effects caused by urbanization. Therefore, no on-site minimization measures are proposed to reduce take of scrub-jays.

In combination, the Applicants propose to mitigate for the loss of 1.21 acres of scrub-jay habitat by contributing a total of $17,024 ($3,236 for Catlow, $4,080 for Markieh, $3,236 for Stone, $3,236 for Knudsen, and $3,236 for Intoccia) to the Florida Scrub-jay Conservation Fund administered by The Nature Conservancy. Funds in this account are ear-marked for use in the conservation and recovery of scrub-jays and may include habitat acquisition, restoration, and/or management. The $17,024 is sufficient to acquire and perpetually manage 2.42 acres of suitable occupied scrub-jay habitat based on a replacement ratio of two mitigation acres per one impact acre. The cost is based on previous acquisitions of mitigation lands in southern Brevard County at an average $5,700 per acre, plus a $1,000 per acre management endowment necessary to ensure future management of acquired scrub-jay habitat. In addition, a 5 percent operating cost of $335 per acre will be included.

The Service has determined that the Applicants' proposal, including the proposed mitigation and minimization measures, will individually and cumulatively have a minor or negligible effect on the species covered in the HCP. Therefore, the ITP is a ''low-effect'' project and qualifies as a categorical exclusion under the National Environmental Policy Act (NEPA), as provided by the Department of Interior Manual (516 DM 2, Appendix 1 and 516 DM 6, Appendix 1). This preliminary information may be revised based on our review of public comments that we receive in response to this notice. Low-effect HCPs are those involving: (1) Minor or negligible effects on federally listed or candidate species and their habitats, and (2) minor or negligible effects on other environmental values or resources.

The Service will evaluate the HCPs and comments submitted thereon to determine whether the application meets the requirements of section 10(a) of the Act (16 U.S.C. 1531 *et seq.*). If it is determined that those requirements are met, the ITPs will be issued for incidental take of the Florida scrub-jay. The Service will also evaluate whether issuance of the section 10(a)(1)(B) ITPs comply with section 7 of the Act by conducting an intra-Service section 7 consultation. The results of this consultation, in combination with the above findings, will be used in the final analysis to determine whether or not to issue the ITPs. This notice is provided pursuant to section 10 of the Endangered Species Act and National Environmental Policy Act regulations (40 CFR 1506.6).

Dated: July 12, 2006.

Cynthia K. Dohner,

Acting Regional Director, Southeast Region.

[FR Doc. E6–11802 Filed 7–24–06; 8:45 am]

BILLING CODE 4310–55–P

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

Izembek, Togiak, Tetlin, and Kanuti National Wildlife Refuges, Alaska

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Revised notice of intent to revise comprehensive conservation plans and to prepare environmental assessments; request for comments.

SUMMARY: With this notice, we, the Fish and Wildlife Service, revise our previously published notices of intent to revise comprehensive conservation plans (CCPs) for Togiak, Izembek, Kanuti, and Tetlin National Wildlife Refuges, all in Alaska. Our previous notices stated our intent to document decisions in these CCP revisions with environmental impact statements. However, we now believe that an environmental assessment is the appropriate level of National Environmental Policy Act (NEPA) compliance. We seek public comments.

ADDRESSES: Address comments, questions, and requests to Ken Rice, Planning Team Leader, by mail at U.S. Fish and Wildlife Service, 1011 East

Tudor Rd., MS–231, Anchorage, Alaska 99503, or by e-mail to *ken_w_rice @fws.gov.*

FOR FURTHER INFORMATION, CONTACT: Ken Rice, Planning Team Leader, (907) 786–3502; or e-mail: *ken_w_rice@fws.gov.* Additional information concerning the comprehensive conservation planning process can be found at *http://www.r7.fws.gov/nwr/planning/plans.htm.*

SUPPLEMENTARY INFORMATION: This notice revises the NOIs previously published by the U.S. Fish and Wildlife Service (Service) for the Togiak National Wildlife Refuge (May 13, 1999, 64 FR 25899), Izembek National Wildlife Refuge (November 26, 2003, 68 FR 66474), Kanuti National Wildlife Refuge (November 26, 2003, 68 FR 66475), and Tetlin National Wildlife Refuge (December 7, 2004, 69 FR 70704), all in Alaska. We furnish this notice in compliance with the National Wildlife Refuge System Administration Act of 1966, as amended by the National Wildlife Refuge System Improvement Act of 1997 (Administration Act) (16 U.S.C. 668dd–667ee), and with Service planning policy. Previous notices stated our intent to document decisions in these plan revisions with EISs. Based on input from the public, from other agencies, and from within the Service, and the level of complexity and controversy anticipated, we believe that an EA is the appropriate level of NEPA compliance. Should an EA show that potential impacts of actions in these plans are significant, we will produce an EIS.

By Federal law, all lands within the National Wildlife Refuge System are to be managed in accordance with an approved CCP. Section 304(g) of the Alaska National Interest Lands Conservation Act (PL 96–487, 94 Stat. 2371) directs how CCPs in Alaska are prepared. The Plans guide management decisions and identify refuge goals, long-range objectives, and strategies for achieving refuge purposes. CCPs were developed for each of these Refuges in the 1980's. EISs were prepared in conjunction with those plans. The original notices of intent for the Izembek, Togiak, Tetlin, Kenai, and Kanuti National Wildlife Refuges identified our intent to revise the CCPs developed in the 1980s, and to prepare EISs in conjunction with the revised plans.

The Council on Environmental Quality regulations implementing NEPA direct Federal agencies to prepare EAs under procedures adopted by individual agencies (40 CFR 1501.3). The Fish and Wildlife Service planning policy (602 FW 1–3) requires that CCPs be prepared with an EIS or EA. At the time we prepared the NOIs for the revisions of these plans, we anticipated that new decisions may have significant impacts on the human environment and therefore an EIS was the appropriate NEPA document. We have conducted scoping activities, both internally and with the public, on all of these CCP revisions. Scoping information, together with preliminary alternative development, has not revealed any potentially significant impacts. Revisions to these plans center on the development of vision statements and management goals and objectives, as well as updating policy information and compatibility determinations. Therefore we will prepare EAs for these CCP revisions in accordance with procedures for implementing the NEPA. If at any stage in developing the revised CCPs and associated EAs, we find that new information comes to light that would indicate the need to prepare an EIS we will publish a new NOI and allow the public additional opportunity to provide comment.

Dated: June 30, 2006.

Gary Edwards,

Acting Regional Director, U.S. Fish and Wildlife Service, Anchorage, Alaska.

[FR Doc. E6–11801 Filed 7–24–06; 8:45 am]

BILLING CODE 4310–55–P

INTERNATIONAL TRADE COMMISSION

[Inv. No. 337–TA–519]

In the Matter of Certain Personal Computers, Monitors, and Components Thereof; Notice of Commission Decision To Terminate the Investigation in Its Entirety Based on a Settlement Agreement Between the Parties

AGENCY: International Trade Commission.

ACTION: Notice.

SUMMARY: Notice is hereby given that the U.S. International Trade Commission has determined to terminate this investigation based on a settlement agreement between the parties.

FOR FURTHER INFORMATION CONTACT: Steven Crabb, Esq., Office of the General Counsel, U.S. International Trade Commission, 500 E Street, SW., Washington, DC 20436, telephone (202) 708–5432. Copies of non-confidential documents filed in connection with this investigation are or will be available for inspection during official business hours (8:45 a.m. to 5:15 p.m.) in the Office of the Secretary, U.S. International Trade Commission, 500 E Street, SW., Washington, D.C. 20436, telephone (202) 205–2000. General information concerning the Commission may also be obtained by accessing its Internet server (*http://www.usitc.gov*). The public record for this investigation may be viewed on the Commission's electronic docket (EDIS) at *http://edis.usitc.gov*. Hearing-impaired persons are advised that information on this matter can be obtained by contacting the Commission's TDD terminal on (202) 205–1810.

SUPPLEMENTARY INFORMATION: This investigation was instituted by the Commission on August 6, 2004, based on a complaint filed by Gateway, Inc. of Poway, California (''Gateway'') under section 337 of the Tariff Act of 1930, as amended, 19 U.S.C. 1337. 69 FR 47956. The complainant alleged violations of section 337 in the importation and sale of certain personal computers, monitors, and components thereof, by reason of infringement of three U.S. patents. The complainant named Hewlett-Packard Company (''HP'') of Palo Alto, California as a respondent. Claims 9–11 and 15–19 of U.S. Patent No. 5,192,999 (''the '999 patent'') remain at issue in this investigation.

On October 6, 2005, the presiding administrative law judge (''ALJ'') issued a final initial determination (''ID'') finding no violation of section 337. On December 1, 2005, the Commission issued notice that it had determined to: (1) Review the ALJ's determination regarding induced infringement of claim 19 of the '999 patent and remand the issue to him for further factual findings and analysis; (2) review the ALJ's determination on obviousness solely for the purpose of clarifying the ID's discussion of *Sakraida* v. *AG Pro, Inc.*, 425 U.S. 273 (1976); (3) review the ALJ's determination on enablement; and (4) review the issue of inequitable conduct and remand the issue to him for further factual findings and analysis. The Commission did not review, and therefore adopted, the remainder of the ID. On January 12, 2006, the ALJ issued his findings on remand.

On June 2, 2006, Gateway and HP filed a joint motion to terminate the investigation based on a settlement agreement. On June 13, 2006, the IA filed a response in support of the joint motion to terminate the investigation.

The Commission has determined that termination of the investigation would not have an adverse impact on the public interest and that termination based on a settlement agreement is

generally in the public interest. Accordingly, the Commission has granted the joint motion to terminate the investigation based on the settlement agreement.

The authority for the Commission's determination is contained in section 337 of the Tariff Act of 1930, as amended (19 U.S.C. 1337), and in section 210.21 of the Commission's Rules of Practice and Procedure (19 CFR. 210.21).

Issued: July 19, 2006.

By order of the Commission.

Marilyn R. Abbott,

Secretary to the Commission.

[FR Doc. E6–11753 Filed 7–24–06; 8:45 am]

BILLING CODE 7020–02–P

INTERNATIONAL TRADE COMMISSION

[Investigation Nos. 701–TA–253 and 731–TA–132, 252, 271, 273, 409, 410, 532–534, and 536 (Second Review)]

Certain Pipe and Tube From Argentina, Brazil, India, Korea, Mexico, Taiwan, Thailand, and Turkey

Determinations

On the basis of the record [1] developed in the subject five-year reviews, the United States International Trade Commission (Commission) determines, pursuant to section 751(c) of the Tariff Act of 1930 (19 U.S.C. 1675(c)) (the Act), that revocation of the countervailing duty order on circular welded pipe and tube from Turkey; the antidumping duty orders on circular welded pipe and tube from Brazil, India, Korea, Mexico, Taiwan, Thailand, and Turkey; and the antidumping duty order on light-walled rectangular pipe and tube from Taiwan would be likely to lead to continuation or recurrence of material injury to an industry in the United States within a reasonably foreseeable time. The Commission further determines that revocation of the antidumping duty order on light-walled rectangular pipe and tube from Argentina would not be likely to lead to continuation or recurrence of material injury to an industry in the United States within a reasonably foreseeable time.[2]

Background

The Commission instituted these reviews on July 1, 2005 (65 FR 38204) and determined on October 4, 2005 that it would conduct full reviews (70 FR 60367, October 17, 2005). Notice of the scheduling of the Commission's reviews and of a public hearing to be held in connection therewith was given by posting copies of the notice in the Office of the Secretary, U.S. International Trade Commission, Washington, DC, and by publishing the notice in the **Federal Register** on December 5, 2005 (70 FR 72467).[3] The hearing was held in Washington, DC, on May 9, 2006, and all persons who requested the opportunity were permitted to appear in person or by counsel.

The Commission transmitted its determinations in these reviews to the Secretary of Commerce on July 18, 2006. The views of the Commission are contained in USITC Publication 3867 (July 2006), entitled *Certain Pipe and Tube from Argentina, Brazil, India, Korea, Mexico, Taiwan, Thailand, and Turkey (Inv. Nos. 701–TA–253 and 731–TA–132, 252, 271, 409, 410, 532–534, and 536 (Second Review)).*

Issued: July 18, 2006.

By order of the Commission.

Marilyn R. Abbott,

Secretary to the Commission.

[FR Doc. E6–11755 Filed 7–24–06; 8:45 am]

BILLING CODE 7020–02–P

INTERNATIONAL TRADE COMMISSION

[Investigation Nos. 731–TA–636–638 (Second Review)

Stainless Steel Wire Rod From Brazil, France, and India

Determination

On the basis of the record [1] developed in these subject five-year reviews, the United States International Trade Commission (Commission) determines, pursuant to section 751(c) of the Tariff Act of 1930 (19 U.S.C. 1675(c)) (the Act), that revocation of the antidumping duty orders on stainless steel wire rod from Brazil and France would not be likely to lead to continuation or recurrence of material injury to an industry in the United States within a reasonably foreseeable time.[2] The Commission further determines that revocation of the antidumping duty order on stainless steel wire rod from India would be likely to lead to continuation or recurrence of material injury to an industry in the United States within a reasonably foreseeable time.

Background

The Commission instituted these reviews on July 1, 2005 (70 FR 38207) and determined on October 4, 2005 that it would conduct full reviews (70 FR 60109, October 14, 2005). Notice of the scheduling of the Commission's reviews and of a public hearing to be held in connection therewith was given by posting copies of the notice in the Office of the Secretary, U.S. International Trade Commission, Washington, DC, and by publishing the notice in the **Federal Register** on January 23, 2006 (71 FR 3541). The hearing was held in Washington, DC, on May 18, 2006, and all persons who requested the opportunity were permitted to appear in person or by counsel.

The Commission transmitted its determinations in these reviews to the Secretary of Commerce on July 19, 2006. The views of the Commission are contained in USITC Publication 3866 (July 2006), entitled *Stainless Steel Wire Rod from Brazil, France, and India: Investigation Nos. 731–TA–636–638 (Second Review).*

Issued: July 20, 2006.

By order of the Commission.

Marilyn R. Abbott

Secretary to the Commission.

[FR Doc. E6–11836 Filed 7–24–06; 8:45 am]

BILLING CODE 7020–02–P

DEPARTMENT OF JUSTICE

[AAG/A Order No. 011–2006]

Privacy Act of 1974; System of Records

AGENCY: Executive Office for United States Attorneys, Department of Justice.

ACTION: Notice of modifications to system of records.

SUMMARY: Pursuant to the Privacy Act of 1974 (5 U.S.C. 552a) and Circular A–130 of the Office of Management and Budget (''OMB''), the Executive Office for United States Attorneys (''EOUSA''), Department of Justice (''DOJ''), proposes to update its system of records entitled JUSTICE/USA–015—''Debt Collection Enforcement System,'' last substantively revised on November 12, 1993 (58 FR 60055)—to reflect subsequent legal and administrative developments.

DATES: These actions will be effective September 5, 2006.

[1] The record is defined in sec. 207.2(f) of the Commission's Rules of Practice and Procedure (19 CFR 207.2(f)).

[2] Commissioners Stephen Koplan and Charlotte R. Lane dissenting.

[3] The Commission revised its schedule in these reviews on June 2, 2006 (71 FR 33484, June 9, 2006).

[1] The record is defined in sec. 207.2(f) of the Commission's Rules of Practice and Procedure (19 CFR 207.2(f)).

[2] Commissioners Stephen Koplan and Charlotte R. Lane dissenting with respect to Brazil; Commissioner Lane dissenting with respect to France.

FOR FURTHER INFORMATION CONTACT: For further information regarding this notice, and for general information on EOUSA's Privacy Act systems, contact Anthony J. Ciccone, Senior Attorney Advisor, Freedom of Information and Privacy Staff, Executive Office for United States Attorneys, at (202) 616–6757.

SUPPLEMENTARY INFORMATION: This notice updates JUSTICE/USA–015 to reflect debt collection enforcement developments since its 1993 publication. Among other things, this notice revises statutory references, effects miscellaneous nomenclature changes, and updates storage, safeguards, access, and related issues. This notice also adds certain routine uses to facilitate debt collection enforcement efforts by EOUSA, the United States Attorneys' Offices (''USAOs''), and other Departmental components, including their agents and investigators.

In accordance with 5 U.S.C. 552a(e)(4) and (11), the public is given a 30-day period in which to comment; and OMB, which has oversight responsibility of the Act, requires a 40-day period in which to conclude its review of the system. Therefore, please submit any comments by September 5, 2006. The public, OMB, and Congress are invited to submit comments to: Mary Cahill, Management and Planning Staff, Justice Management Division, Department of Justice, 1331 Pennsylvania Ave., NW., Washington, DC 20530 (1400 National Place Building). In accordance with 5 U.S.C. 552a(r), the Department has provided a report to OMB and Congress.

Dated: July 18, 2006.

Lee J. Lofthus,

Acting Assistant Attorney General for Administration.

JUSTICE/USA–015

SYSTEM NAME:

Debt Collection Enforcement System, JUSTICE/USA–015.

SECURITY CLASSIFICATION:

Sensitive but unclassified.

SYSTEM LOCATION:

The Executive Office for United States Attorneys (''EOUSA'') in Washington, DC, the Network Operations Center (''NOC'') in Columbia, SC, and individual United States Attorneys' Offices (''USAOs'') and their agents in each of the 94 Federal judicial districts nationwide, depending upon where debt collection proceedings are pending. (Individual office addresses can be located on the Internet at *http://www.usdoj.gov/usao.*)

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

Individuals indebted to the United States who have either: (1) Allowed their debts to become delinquent and whose delinquent debts have been assigned to a USAO, or to private counsel retained by DOJ pursuant to contract (''contract private counsel''), for settlement or enforced collection through litigation; and/or (2) incurred debts assessed by a Federal court, e.g., fines or penalties in connection with civil or criminal proceedings.

CATEGORIES OF RECORDS IN THE SYSTEM:

This system of records contains records relating to the negotiation, compromise, settlement, and litigation of debts owed the United States. Records consist of debt collection case files, as well as automated and/or hard-copy supporting data, as summarized below.

Case files include: evidence of indebtedness, judgment, or discharge; court filings such as legal briefs, pleadings, judgments, orders, and settlement agreements; litigation reports and related attorney work product; and agency status reports, memoranda, correspondence, and other documentation developed during the negotiation, compromise, settlement and/or litigation of debt collection activities.

Automated and/or hard-copy supporting data include information extracted from the case file and information generated or developed in support of Federal debt collection activities. Such information may include: Personal data (e.g., name, social security number, date of birth, taxpayer identification number, locator information, etc.); claim details (e.g., value and type of claim, such as benefit overpayment, loan default, bankruptcy, etc.); demand information, settlement negotiations, and compromise offered; account information (e.g., debtor's payments, including principal, penalties, interests, and balances, etc.); information regarding debtor's employment, ability to pay, property liens, etc.; data regarding debtor's loans or benefits from client agencies or other entities; information on the status and disposition of cases at various times; and any other information related to the negotiation, compromise, settlement, or litigation of debts owed the United States, or to the administrative management of debt collection efforts.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

This system is established and maintained pursuant to the Debt Collection Act of 1982, Public Law 97–365, 96 Stat. 1749 (1982), as amended by the Debt Collection Improvement Act of 1996, Public Law 104–134, 110 Stat. 132 (1996) (codified at 31 U.S.C. 3701, *et seq.*); the Federal Debt Collection Procedure Act of 1990, Public Law 101–647, 104 Stat. 4933 (1990) (codified at 28 U.S.C. 3001, *et seq.*); the Cash Management Improvement Act of 1992, as amended by Public Law 102–589, 106 Stat. 5135 (1994); and related authority.

PURPOSES:

This system of records is maintained by EOUSA to cover records used by the USAOs, and/or contract private counsel, to perform legal services associated with the collection of debts due the United States—including related negotiation, settlement, litigation, and enforcement efforts—in accordance with the Debt Collection Act and related authority. More specifically, 31 U.S.C. 3711 authorizes the Attorney General to conduct litigation to collect delinquent debts due the United States. In addition, 31 U.S.C. 3718(b) authorizes the Attorney General to contract with private counsel to assist DOJ in collecting debts due the United States. The Attorney General is further authorized by 28 U.S.C. 3101 and 3201, *et seq.* (Chapter 176, ''Federal Debt Collection Procedure'') to obtain both pre-judgment and post-judgment remedies against delinquent debtors. Moreover, under 28 U.S.C. 3201(a) and (e), a judgment against such a debtor creates a lien on all real property of the debtor, and renders that debtor ineligible for any grant or loan insured, financed, guaranteed, or made by the Federal Government.

Note: A separate but ancillary system of records—entitled ''Debt Collection Management System, Justice/JMD–006''—is maintained by the Justice Management Division (''JMD''). System JMD–006 furnishes automated litigation and/or administrative support to USAOs and to contract private counsel to assist in Federal debt collection activities. In addition, the JMD–006 system maintains an inventory of debtor files in all 94 judicial districts, consisting of all debtors referred to DOJ for settlement and/or enforced collection through litigation. The inventory enables DOJ to provide statistical data to Congress and OMB on debt collection in accordance with 31 U.S.C. 3718(c).

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

1. Disclosures to Former Employees

Information may be disclosed to a former employee of the Department for purposes of: responding to an official inquiry by a Federal, State, or local government entity or professional

licensing authority, in accordance with applicable Department regulations; or facilitating communications with a former employee that may be necessary for personnel-related or other official purposes where the Department requires information and/or consultation assistance from the former employee regarding a matter within that person's former area of responsibility.

2. Disclosures to Contractors and Other Personnel

Information may be disclosed to contractors, grantees, experts, consultants, students, and others performing or working on a contract, service, grant, cooperative agreement, or other assignment for the Federal Government, when necessary to accomplish an agency function related to this system of records, including but not limited to persons assigned to the Department's Nationwide Central Intake Facility (''NCIF'') and/or contract private counsel and their agents.

3. Disclosures Related to Offsets and Remedies

Information may be disclosed to the Internal Revenue Service (''IRS''), Department of Defense (''DOD''), United States Postal Service (''USPS''), and/or Department of Housing and Urban Development (''HUD'') in accordance with computer matching or data sharing programs to locate debtors eligible for Federal tax refunds, salaries, pensions, annuities, benefits, or other Federal payments against which offsets or other remedies would be appropriate. The debts and associated records of individuals so identified may be referred to the appropriate Federal agency for collection by administrative, salary, or other procedures to offset Federal payments.

4. Disclosures to Treasury Department

Information may be disclosed to the Department of the Treasury, including the IRS, pursuant to the Debt Collection Improvement Act and related authority for any purpose related to debt collection, including locating debtors for debt collection efforts and/or effecting offsets against monies payable to such debtors by the Federal Government.

5. Disclosures to Client Agencies

Information from this system may be disclosed to client agencies who have referred outstanding debts to DOJ for debt collection efforts, including settlement or litigation, to notify such agencies of case developments, the status of accounts receivable or payable, case-related decisions or determinations, or to make such other inquiries and reports related to debt collection efforts.

6. Disclosures to Disbursing/Offset Agencies

Information from this system may be disclosed to any Federal agency that employs and/or pays pension, annuity and/or other benefits to an individual who has been identified as a delinquent debtor for purposes of offsetting the individual's salary and/or pension, annuity or other benefit payment received from that agency, when DOJ is responsible for the enforced collection of a judgment or claim on behalf of the United States against that person.

7. Disclosures for Debt Verification and Collection Purposes

Information from this system may be disclosed to any Federal, State, local, or tribal agency, or to an individual or organization, if there is reason to believe that they possess information relating to the verification or collection of debts owed the Federal Government, and if the disclosure seeks to elicit information from such entities regarding: (a) The status of such debts, including settlement, litigation, or other collection efforts; (b) the identification or location of such debtors; or (c) the cooperation of witnesses, informants, or others possessing collection-related information.

8. Disclosures of Non-Tax Debts

In accordance with regulations issued by the Secretary of the Treasury to implement the Debt Collection Improvement Act of 1996, information from this system may be disclosed to publish or otherwise publicly disseminate the identity of debtors and/or the existence of non-tax debts, in order to direct actions under the law toward delinquent debtors that have assets or income sufficient to pay their delinquent non-tax debts, but only: upon taking reasonable steps to ensure the accuracy of the identity of a debtor; upon ensuring that such debtor has had an opportunity to verify, contest, and compromise a non-tax debt; and with the review of the Secretary of Treasury or designee.

9. Disclosures for Audit, Oversight, and Training

Information from this system may be disclosed to any individual or organization requiring such information for the purpose of performing audit, oversight, and training operations of DOJ and to meet related reporting requirements.

10. Disclosures to Law Enforcement and Regulatory Agencies

Where a record, either on its face or in conjunction with other information, indicates a violation or potential violation of law—criminal, civil, or regulatory in nature—the relevant records may be referred to the appropriate Federal, State, local, foreign, or tribal, law enforcement authority or other appropriate agency charged with the responsibility of investigating or prosecuting such a violation or enforcing or implementing such law.

11. Disclosures in Proceedings

Information from this system may be disclosed in an appropriate proceeding before a court, or administrative or adjudicative body, when DOJ determines that the records are arguably relevant to the proceeding; or in an appropriate proceeding before an administrative or adjudicative body when the adjudicator determines the records to be relevant to the proceeding.

12. Disclosures in Settlement/Plea Negotiations

Information from this system may be disclosed to an actual or potential party to litigation or the party's authorized representative for the purpose of negotiation or discussion of such matters as settlement, plea bargaining, or in informal discovery proceedings.

13. Disclosures Related to Federal Employment, Clearance, Contracts, and Grants

Information from this system may be disclosed to appropriate officials and employees of a Federal agency or entity which requires information relevant to a decision concerning the hiring, appointment, or retention of an employee; the issuance, renewal, suspension, or revocation of a security clearance; the execution of a security or suitability investigation; the letting of a contract, or the issuance of a grant or benefit.

14. Disclosures Related to State or Local Employment

Information from this system may be disclosed to designated officers and employees of state, local (including the District of Columbia), or tribal law enforcement or detention agencies in connection with the hiring or continued employment of an employee or contractor, where the employee or contractor would occupy or occupies a position of public trust as a law enforcement officer or detention officer having direct contact with the public or with prisoners or detainees, to the

extent that the information is relevant and necessary to the recipient agency's decision.

15. Disclosures Related to Licenses and Permits

Information from this system may be disclosed to Federal, State, local, tribal, foreign, or international licensing agencies or entities which require information concerning the suitability or eligibility of an individual for a license or permit.

16. Disclosures to NARA

Information from this system may be disclosed to the National Archives and Records Administration (''NARA'') for purposes of records management inspections conducted under the authority of 44 U.S.C. 2904 and 2906.

17. Disclosures to News Media and Public

Information from this system may be disclosed to the news media and the public pursuant to 28 CFR 50.2, unless it is determined that release of the specific information in the context of a particular case would constitute an unwarranted invasion of personal privacy.

18. Disclosures to Members of Congress

Information from this system may be disclosed to a Member of Congress or staff acting upon the Member's behalf when the Member or staff requests the information on behalf of, and at the request of, the individual who is the subject of the record.

19. Disclosures Related to Health Care Fraud

Information from this system relating to health care fraud may be disclosed to private health plans, or associations of private health plans, and health insurers, or associations of health insurers, for the following purposes: To promote the coordination of efforts to prevent, detect, investigate, and prosecute health care fraud; to assist efforts by victims of health care fraud to obtain restitution; to enable private health plans to participate in local, regional, and national health care fraud task force activities; and to assist tribunals having jurisdiction over claims against private health plans.

20. Disclosures to Complainants and Victims

Information from this system may, in the agency's discretion, be disclosed to persons determined to be complainants and/or victims, to the extent deemed necessary to provide such persons with information concerning the progress and/or results of the investigation or case arising from the matters of which they complained and/or of which they were a victim.

DISCLOSURE TO CONSUMER REPORTING AGENCIES:

Information from this system of records may be disclosed to a credit or consumer reporting agency, as such terms are used in the Fair Credit Reporting Act (15 U.S.C. 1681, *et seq.*) and the Debt Collection Act (31 U.S.C. 3701, *et seq.*), when such information is necessary or relevant to Federal debt collection efforts, including, but not limited to, obtaining a credit report on a debtor, payor, or other party-in-interest; reporting on debts due the Government; and/or pursuing the collection of such debts through settlement, negotiation, or litigation.

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM:

STORAGE:

Certain records in this system are maintained in automated computer information systems and stored in electronic format for use or reproduction in report form at various times. Other records in this system are maintained in paper format located in file cabinets, safes, and similar storage containers.

RETRIEVABILITY:

Data in this system of records may be retrieved by debtor names or personal identifiers, case numbers, computerized queries, and other keyword searches.

SAFEGUARDS:

Records contained in this system are unclassified. They are safeguarded and protected in accordance with DOJ rules and procedures governing the handling of office records and computerized information. Access to this system is restricted to those DOJ employees and contractors, including contract private counsel, who need access to perform official debt collection activities, including related administrative and support functions. During duty hours, access to this system is monitored and controlled by DOJ employees and contractors. During nonduty hours, records are maintained in locked facilities. Access to automated data requires the use of the proper password and user identification code. Access by contract private counsel is restricted to those cases assigned to them for debt collection efforts.

RETENTION AND DISPOSAL:

Records from this system are retained and disposed of in accordance with Part 3–13.310 of the United States Attorneys' Manual (''Comprehensive Retention Schedule'') published at *http://www.usdoj.gov/usao/eousa/foia_reading_room/usam/title3/13musa.htm*, and related authority.

SYSTEM MANAGER(S) AND ADDRESS:

The system managers for this system of records are located at the Executive Office for United States Attorneys in Washington, DC, the Network Operations Center in Columbia, SC, and individual United States Attorneys' Offices in the 94 Federal judicial districts nationwide, depending upon where debt collection proceedings are pending. (Individual office addresses can be located on the Internet at *http://www.usdoj.gov/usao*.)

NOTIFICATION PROCEDURE:

Address inquiries to the System Manager (see above) in the judicial district where debt collection efforts were initiated. For further information, see 28 CFR 16.40, *et seq.*

RECORD ACCESS PROCEDURE:

Requests for access must be in writing and should be addressed to the System Manager (see above) in the judicial district where debt collection efforts were initiated. The envelope and letter should be clearly marked ''Privacy Act Request'' and comply with 28 CFR 16.41 (''Requests for Access to Records''), *et seq.* Access requests must contain the requester's full name, current address, date and place of birth, and should include a clear description of the records sought and any other information that would help to locate the record (*e.g.*, name of the case and Federal agency to whom the debtor is indebted). Access requests must be signed and dated and either notarized or submitted under penalty of perjury pursuant to 28 U.S.C. 1746.

CONTESTING RECORD PROCEDURES:

Individuals desiring to contest or amend information maintained in the system should clearly and concisely state what information is being contested, the reasons for contesting it, and the proposed amendment to the information. Address such inquiries to the System Manager (see above) in the judicial district where debt collection efforts were initiated. The envelope and letter should be clearly marked ''Privacy Act Request'' and comply with 28 CFR 16.46 (''Request for Amendment or Correction of Records''), *et seq.*

RECORD SOURCE CATEGORIES:

Sources of information contained in this system primarily consist of the individuals covered by the system; DOJ

and/or agencies to whom the individual is indebted, seeks benefits, or has furnished information; attorneys or other representatives of debtor and/or payors; and Federal, State, local, tribal, foreign, or private organizations or individuals who may have information regarding the debt, the debtor's ability to pay, or any other information relevant or necessary to assist in debt collection efforts.

EXEMPTIONS CLAIMED FOR THE SYSTEM:

None.

[FR Doc. E6–11803 Filed 7–24–06; 8:45 am]

BILLING CODE 4410–07–P

DEPARTMENT OF LABOR

Employment and Training Administration

[TA–W–59,453]

A.W. Bohanan Co., Inc.; Dalls, NC; Notice of Termination of Investigation

Pursuant to section 221 of the Trade Act of 1974, as amended, an investigation was initiated on May 24, 2006 in response to a worker petition filed on behalf of workers at A.W. Bohanan Company, Inc., Dallas, North Carolina.

The petitioning group of workers is covered by an earlier petition (TA–W–59,428) filed on May 17, 2006 that is the subject of an ongoing investigation for which a determination has not yet been issued. Further investigation in this case would duplicate efforts and serve no purpose; therefore the investigation under this petition has been terminated.

Signed at Washington, DC this 23rd day of June 2006.

Richard Church,

Certifying Officer, Division of Trade Adjustment Assistance.

[FR Doc. E6–11857 Filed 7–24–06; 8:45 am]

BILLING CODE 4510–30–P

DEPARTMENT OF LABOR

Employment and Training Administration

[TA–W–59,473]

Briggs Plumbing Products, Inc.; Flora, IN; Dismissal of Application for Reconsideration

Pursuant to 29 CFR 90.18(C) an application for administrative reconsideration was filed with the Director of the Division of Trade Adjustment Assistance for workers at Briggs Plumbing Products, Inc., Flora, Indiana. The application did not contain new information supporting a conclusion that the determination was erroneous, and also did not provide a justification for reconsideration of the determination that was based on either mistaken facts or a misinterpretation of facts or of the law. Therefore, dismissal of the application was issued.

TA–W–59,473; Briggs Plumbing Products, Inc., Flora, Indiana (July 12, 2006)

Signed at Washington, DC this 12th day of July 2006.

Richard Church,

Acting Director, Division of Trade Adjustment Assistance.

[FR Doc. E6–11858 Filed 7–24–06; 8:45 am]

BILLING CODE 4510–30–P

DEPARTMENT OF LABOR

Employment and Training Administration

[TA–W–59,067]

Coe Manufacturing; Tigard, OR; Dismissal of Application for Reconsideration

Pursuant to 29 CFR 90.18(C) an application for administrative reconsideration was filed with the Director of the Division of Trade Adjustment Assistance for workers at Coe Manufacturing, Tigard, Oregon. The application did not contain new information supporting a conclusion that the determination was erroneous, and also did not provide a justification for reconsideration of the determination that was based on either mistaken facts or a misinterpretation of facts or of the law. Therefore, dismissal of the application was issued.

TA–W–59,067; Coe Manufacturing Tigard, Oregon (July 12, 2006).

Signed at Washington, DC this 12th day of July 2006.

Richard Church,

Acting Director, Division of Trade Adjustment Assistance.

[FR Doc. E6–11853 Filed 7–24–06; 8:45 am]

BILLING CODE 4510–30–P

DEPARTMENT OF LABOR

Employment and Training Administration

[TA–W–59,197]

Collins and Aikman Products Company; Farmville, NC; Notice of Affirmative Determination Regarding Application for Reconsideration

By application June 12, 2006, a company official requested administrative reconsideration of the Department of Labor's Notice of Negative Determination Regarding Eligibility to Apply for Worker Adjustment Assistance and Alternative Trade Adjustment Assistance, applicable to workers of the subject firm. The Department's negative determination was issued on May 11, 2006. On June 9, 2006, the Department's Notice of determination was published in the **Federal Register** (71 FR 33488).

In the request for reconsideration, the company official alleges that the Department investigated only one of the two articles produced at the subject facility (automotive interior fabrics and specialty products).

The Department has carefully reviewed the request for reconsideration and has determined that the Department will conduct further investigation based on new information provided by the company official.

Conclusion

After careful review of the application, I conclude that the claim is of sufficient weight to justify reconsideration of the Department of Labor's prior decision. The application is, therefore, granted.

Signed at Washington, DC, this 27th day of June 2006.

Elliott S. Kushner,

Certifying Officer, Division of Trade Adjustment Assistance.

[FR Doc. E6–11854 Filed 7–24–06; 8:45 am]

BILLING CODE 4510–30–P

DEPARTMENT OF LABOR

Employment and Training Administration

[TA–W–59,600]

Cooper Hand Tools Nicholson File; Cullman, AL; Notice of Termination of Investigation

Pursuant to section 221 of the Trade Act of 1974, an investigation was initiated on June 21, 2006 in response to a petition filed by a company official on behalf of workers at Cooper Hand

Tools, Nicholson File, Cullmam, Alabama.

The petitioner has requested that the petition be withdrawn. Consequently, the investigation has been terminated.

Signed in Washington, DC, this 27th day of June 2006.

Elliott S. Kushner,

Certifying Officer, Division of Trade Adjustment Assistance.

[FR Doc. E6–11867 Filed 7–24–06; 8:45 am]

BILLING CODE 4510–30–P

DEPARTMENT OF LABOR

Employment and Training Administration

[TA–W–59,445]

Ford Motor Company; Vehicle Operations; Twin Cities Assembly Plant; St. Paul, MN; Notice of Termination of Investigation

Pursuant to section 221 of the Trade Act of 1974, as amended, an investigation was initiated on May 23, 2006 in response to a petition filed by a state workforce representative on behalf of workers at Ford Motor Company, Vehicle Operations, Twin Cities Assembly Plant, St. Paul, Minnesota.

The petitioner has requested that the petition be withdrawn. Consequently, the investigation has been terminated.

Signed at Washington, DC this 22nd day of June, 2006.

Elliott S. Kushner,

Certifying Officer, Division of Trade Adjustment Assistance.

[FR Doc. E6–11856 Filed 7–24–06; 8:45 am]

BILLING CODE 4510–30–P

DEPARTMENT OF LABOR

Employment and Training Administration

[TA–W–59,622]

Gyrus ACMI Corporation; Racine, WI; Notice of Termination of Investigation

Pursuant to section 221 of the Trade Act of 1974, an investigation was initiated on June 26, 2006 in response to a petition filed by a company official on behalf of workers at Gyrus ACMI Corporation, Racine, Wisconsin.

The petitioner has requested that the petition be withdrawn. Consequently, the investigation has been terminated.

Signed in Washington, DC, this 30th day of June 2006.

Elliott S. Kushner,

Certifying Officer, Division of Trade Adjustment Assistance.

[FR Doc. E6–11869 Filed 7–24–06; 8:45 am]

BILLING CODE 4510–30–P

DEPARTMENT OF LABOR

Employment and Training Administration

Notice of Determinations Regarding Eligibility To Apply for Worker Adjustment Assistance and Alternative Trade Adjustment Assistance

In accordance with section 223 of the Trade Act of 1974, as amended (19 U.S.C. 2273) the Department of Labor herein presents summaries of determinations regarding eligibility to apply for trade adjustment assistance for workers (TA–W) number and alternative trade adjustment assistance (ATAA) by (TA–W) number issued during the period of July 2006.

In order for an affirmative determination to be made for workers of a primary firm and a certification issued regarding eligibility to apply for worker adjustment assistance, each of the group eligibility requirements of Section 222(a) of the Act must be met.

I. Section (a)(2)(A) all of the following must be satisfied:

A. A significant number or proportion of the workers in such workers' firm, or an appropriate subdivision of the firm, have become totally or partially separated, or are threatened to become totally or partially separated;

B. The sales or production, or both, of such firm or subdivision have decreased absolutely; and

C. Increased imports of articles like or directly competitive with articles produced by such firm or subdivision have contributed importantly to such workers' separation or threat of separation and to the decline in sales or production of such firm or subdivision; or

II. Section (a)(2)(B) both of the following must be satisfied:

A. A significant number or proportion of the workers in such workers' firm, or an appropriate subdivision of the firm, have become totally or partially separated, or are threatened to become totally or partially separated;

B. There has been a shift in production by such workers' firm or subdivision to a foreign country of articles like or directly competitive with articles which are produced by such firm or subdivision; and

C. One of the following must be satisfied:

1. The country to which the workers' firm has shifted production of the articles is a party to a free trade agreement with the United States;

2. The country to which the workers' firm has shifted production of the articles to a beneficiary country under the Andean Trade Preference Act, African Growth and Opportunity Act, or the Caribbean Basin Economic Recovery Act; or

3. There has been or is likely to be an increase in imports of articles that are like or directly competitive with articles which are or were produced by such firm or subdivision.

Also, in order for an affirmative determination to be made for secondarily affected workers of a firm and a certification issued regarding eligibility to apply for worker adjustment assistance, each of the group eligibility requirements of section 222(b) of the Act must be met.

(1) Significant number or proportion of the workers in the workers' firm or an appropriate subdivision of the firm have become totally or partially separated, or are threatened to become totally or partially separated;

(2) The workers' firm (or subdivision) is a supplier or downstream producer to a firm (or subdivision) that employed a group of workers who received a certification of eligibility to apply for trade adjustment assistance benefits and such supply or production is related to the article that was the basis for such certification; and

(3) Either—

(A) The workers' firm is a supplier and the component parts it supplied for the firm (or subdivision) described in paragraph (2) accounted for at least 20 percent of the production or sales of the workers' firm; or

(B) A loss or business by the workers' firm with the firm (or subdivision) described in paragraph (2) contributed importantly to the workers' separation or threat of separation.

In order for the Division of Trade Adjustment Assistance to issue a certification of eligibility to apply for Alternative Trade Adjustment Assistance (ATAA) for older workers, the group eligibility requirements of Section 246(a)(3)(A)(ii) of the Trade Act must be met.

1. Whether a significant number of workers in the workers' firm are 50 years of age or older.

2. Whether the workers in the workers' firm possess skills that are not easily transferable.

3. The competitive conditions within the workers' industry (*i.e.*, conditions within the industry are adverse).

Affirmative Determinations for Worker Adjustment Assistance

The following certifications have been issued. The date following the company name and location of each determination references the impact date for all workers of such determination.

The following certifications have been issued. The requirements of section 222(a)(2)(A) (increased imports) of the Trade Act have been met.

None.

The following certifications have been issued. The requirements of section 222(a)(2)(B) (shift in production) of the Trade Act have been met.

TA–W–59,460; Hoffman-La Roche, Inc., Packaging Department, Nutley, NJ: May 19, 2005

The following certifications have been issued. The requirements of section 222(b) (supplier to a firm whose workers are certified eligible to apply for TAA) of the Trade Act have been met.

None.

The following certifications have been issued. The requirements of section 222(b) (downstream producer for a firm whose workers are certified eligible to apply for TAA based on increased imports from or a shift in production to Mexico or Canada) of the Trade Act have been met.

None.

Affirmative Determinations for Worker Adjustment Assistance and Alternative Trade Adjustment Assistance

The following certifications have been issued. The date following the company name and location of each determination references the impact date for all workers of such determination.

The following certifications have been issued. The requirements of section 222(a)(2)(A) (increased imports) and section 246(a)(3)(A)(ii) of the Trade Act have been met.

TA–W–59,447; Amcast Automotive, Fremont, IN: May 17, 2005

TA–W–59,505; Claude Gable Company, Inc., High Point, NC: June 1, 2005

TA–W–59,518; Orion America, Inc., Princeton, IN: June 5, 2005

TA–W–59,528; Alexvale Furniture Company, Inc., Plant #1, Taylorsville, NC: June 6, 2005

TA–W–59,528A; Alexvale Furniture Company, Inc., Plant #5, Taylorsville, NC: June 6, 2005

TA–W–59,546; Chair Tech Mfg. and Supply, Benton, AR: June 9, 2005

TA–W–59,575; Ephrata Manufacturing Co., Ephrata, PA: June 12, 2005

TA–W–59,609; Hodges Wood Products, Inc., Marietta, MS: June 21, 2005

TA–W–59,612; Tietex Interiors, Rocky Mount Division, Rocky Mount, NC: June 21, 2005

TA–W–59,459; Michelle Jane, New York, NY: May 19, 2005

The following certifications have been issued. The requirements of section 222(a)(2)(B) (shift in production) and section 246(a)(3)(A)(ii) of the Trade Act have been met.

TA–W–59,523; Simkins Industries, Inc., New Haven, CT: June 5, 2005

TA–W–59,485; A.O. Smith Electrical Products, Tipp City, OH: May 26, 2005

TA–W–59,525; Securitas Security Services USA, Working on Site at Hamilton Sundstrand, A Division of United Technologies, Grand Junction, CO: June 5, 2005

TA–W–59,613; Burle Industries, A Subsidiary of Photonis Holding, Lancaster, PA: April 1, 2006

TA–W–59,615; Belden CDT, Inc., Tompkinsville, KY: June 22, 2005

TA–W–59,370; Universal Leaf of North America U.S. Inc., Danville, VA: April 24, 2005

TA–W–59,458; Salon Manufacturing Co., Leased Workers of Adecco Employment, Skowhegan, ME: May 19, 2005

TA–W–59,513; Robert Bosch Tool Corporation, Elizabethtown, KY: November 11, 2005

TA–W–59,535; Water Pik, Inc., Fort Collins, CO: June 7, 2005

The following certifications have been issued. The requirements of section 222(b) (supplier to a firm whose workers are certified eligible to apply for TAA) and section 246(a)(3)(A)(ii) of the Trade Act have been met.

TA–W–59,510; Avondale Mills, Inc., Sylacauga, AL: June 2, 2005

TA–W–59,510A; Avondale Mills, Inc., Pell City Plant, Pell City, AL: June 2, 2005

TA–W–59,510B; Avondale Mills, Inc., Sales Office, New York, NY: June 2, 2005

TA–W–59,510C; Avondale Mills, Inc., Sales Office, Coppell, TX: June 2, 2005

TA–W–59,510D; Avondale Mills, Inc., Sales Office, San Francisco, CA: June 2, 2005

TA–W–59,510E; Avondale Mills, Inc., Sales Office, Greensboro, NC: June 2, 2005

TA–W–59,510F; Avondale Mills, Inc., Sales Office, Matthews, NC: June 2, 2005

TA–W–59,510G; Avondale Mills, Inc., Sales Office, Huntington Beach, CA: June 2, 2005

TA–W–59,510H; Avondale Mills, Inc., Sales Office, Knoxville, TN: June 2, 2005

TA–W–59,511; Avondale Mills Inc., Sibley Plant, Augusta, GA: June 2, 2005

TA–W–59,511A; Avondale Mills Inc., Corporate Office, Monroe, GA: June 2, 2005

TA–W–59,511B; Avondale Mills Inc., Walton Plant, Monroe, GA: May 28, 2006

TA–W–59,511C; Avondale Mills Inc., Tifton Plant, Tifton, GA: June 2, 2005

TA–W–59,515; Avondale Mills Inc., Hickman Plant, Graniteville, SC: June 2, 2005

TA–W–59,515A; Avondale Mills Inc., Horse Creek Plant, Graniteville, SC: June 2, 2005

TA–W–59,515B; Avondale Mills Inc., Sage Mill, Graniteville, SC: June 2, 2005

TA–W–59,515C; Avondale Mills Inc., Walhalla Plant (Walhalla, South Carolina), Graniteville, June 2, 2005

The following certifications have been issued. The requirements of section 222(b) (downstream producer for a firm whose workers are certified eligible to apply for TAA based on increased imports from or a shift in production to Mexico or Canada) and section 246(a)(3)(A)(ii) of the Trade Act have been met.

None.

Negative Determinations for Alternative Trade Adjustment Assistance

In the following cases, it has been determined that the requirements of 246(a)(3)(A)(ii) have not been met for the reasons specified.

The Department as determined that criterion (1) of section 246 has not been met. Workers at the firm are 50 years of age or older.

None.

The Department as determined that criterion (2) of Section 246 has not been met. Workers at the firm possess skills that are easily transferable.

TA–W–59,460; Hoffman-La Roche, Inc., Packaging Department, Nutley, NJ

The Department as determined that criterion (3) of section 246 has not been met. Competition conditions within the workers' industry are not adverse.

None.

Negative Determinations for Worker Adjustment Assistance and Alternative Trade Adjustment Assistance

In the following cases, the investigation revealed that the eligibility

criteria for worker adjustment assistance have not been met for the reasons specified.

Since the workers of the firm are denied eligibility to apply for TAA, the workers cannot be certified eligible for ATAA.

The investigation revealed that criteria (a)(2)(A)(I.A.) and (a)(2)(B)(II.A.) (employment decline) have not been met.

TA–W–59,474; Curt G. Joa, Inc., Sheboygan Falls, WI

The investigation revealed that criteria (a)(2)(A)(I.B.) (Sales or production, or both, did not decline) and (a)(2)(B)(II.B.) (shift in production to a foreign country) have not been met.

None.

The investigation revealed that criteria (a)(2)(A)(I.C.) (increased imports) and (a)(2)(B)(II.B.) (shift in production to a foreign country) have not been met.

None.

The investigation revealed that the predominate cause of worker separations is unrelated to criteria (a)(2)(A)(I.C.) (increased imports) and (a)(2)(B)(II.C) (shift in production to a foreign country).

TA–W–59,267; GT Merchandising and Licensing, GT Distribution Facility, Jersey City, NJ

TA–W–59,538; Crefton Industries, Leased Workers of Staffmark, Alliance, and Tri-State, City of Industries, CA

TA–W–59,569; Fort Wayne Foundry Corp., Pontiac Division, Fort Wayne, IN

The workers' firm does not produce an article as required for certification under section 222 of the Trade Act of 1974.

None.

The investigation revealed that criteria of section 222(b)(2) has not been met. The workers' firm (or subdivision) is not a supplier to or a downstream producer for a firm whose workers were certified eligible to apply for TAA.

None.

I hereby certify that the aforementioned determinations were issued during the month of July 2006. Copies of These determinations are available for inspection in Room C–5311, U.S. Department of Labor, 200 Constitution Avenue, NW., Washington, DC 20210 during normal business hours or will be mailed to persons who write to the above address.

Dated: July 14, 2006.

Richard Church,

Acting Director, Division of Trade Adjustment Assistance.

[FR Doc. E6–11871 Filed 7–24–06; 8:45 am]

BILLING CODE 4510–30–P

DEPARTMENT OF LABOR

Employment and Training Administration

[TA–W–59,601]

Hospira; Ashland, OH; Notice of Termination of Investigation

Pursuant to section 221 of the Trade Act of 1974, an investigation was initiated on June 21, 2006 in response to a petition filed by United Steelworkers of America, Local 196L, on behalf of workers at Hospira, Ashland, Ohio (TA–W–59,601).

The petitioner has requested that the petition be withdrawn. Consequently, further investigation in this case would serve no purpose, and the investigation has been terminated.

Signed in Washington, DC, this 27th day of June, 2006.

Linda G. Poole,

Certifying Officer, Division of Trade Adjustment Assistance.

[FR Doc. E6–11868 Filed 7–24–06; 8:45 am]

BILLING CODE 4510–30–P

DEPARTMENT OF LABOR

Employment and Training Administration

[TA–W–59,629]

IPC Print Services; Saint Joseph, MI; Notice of Termination of Investigation

Pursuant to section 221 of the Trade Act of 1974, as amended, an investigation was initiated on June 26, 2006 in response to a petition filed on behalf of workers of IPC Print Services, Saint Joseph, Michigan.

The petition has been deemed invalid. Two of the three petitioners were separated from employment more than one-year prior to the date of the petition (June 16, 2006). Consequently, the investigation has been terminated.

Signed at Washington, DC, this 27th day of June 2006.

Linda G. Poole,

Certifying Officer, Division of Trade Adjustment Assistance.

[FR Doc. E6–11870 Filed 7–24–06; 8:45 am]

BILLING CODE 4510–30–P

DEPARTMENT OF LABOR

Employment and Training Administration

[TA–W–59,530]

Johnson Controls, Inc.; Interiors Division; Holland, MI; Notice of Termination of Investigation

Pursuant to section 221 of the Trade Act of 1974, as amended, an investigation was initiated on June 7, 2006 in response to a worker petition filed by a company official on behalf of workers of Johnson Controls, Inc., Interiors Division, Holland, Michigan.

The petitioner has requested that the petition be withdrawn at this time. Consequently, the investigation has been terminated.

Signed at Washington, DC this 29th day of June 2006.

Linda G. Poole,

Certifying Officer, Division of Trade Adjustment Assistance.

[FR Doc. E6–11863 Filed 7–24–06; 8:45 am]

BILLING CODE 4510–30–P

DEPARTMENT OF LABOR

Employment and Training Administration

[TA–W–59,591]

JPMorgan Chase and Co.; Chase Home Equity; Houston, TX; Notice of Termination of Investigation

Pursuant to section 221 of the Trade Act of 1974, as amended, an investigation was initiated on June 20, 2006, in response to a petition filed by a union official on behalf of workers of JPMorgan Chase and Co., Chase Home Equity, Houston, Texas.

The petition regarding the investigation has been deemed invalid. The petitioner was not a union official, but was one dislocated worker. A petition filed by workers requires three (3) signatures. Consequently, the investigation has been terminated.

Signed at Washington, DC, this 5th day of July, 2006.

Linda G. Poole,

Certifying Officer, Division of Trade Adjustment Assistance.

[FR Doc. E6–11866 Filed 7–24–06; 8:45 am]

BILLING CODE 4510–30–P

DEPARTMENT OF LABOR

Employment and Training Administration

[TA–W–59,432]

Microtronic, Inc.; Workers Employed at Agere Systems, Inc.; Orlando, FL; Notice of Termination of Investigation

Pursuant to section 221 of the Trade Act of 1974, an investigation was initiated on May 19, 2006 in response to a worker petition filed by the Florida State Trade Coordinator on behalf of a worker of Microtronic, Inc., employed at Agere Systems, Inc., Orlando, Florida.

The worker on whose behalf the petition was filed is covered by an active certification (TA–W–58,369, as amended) which expires on December 19, 2007. Consequently, further investigation in this case would serve no purpose, and the investigation has been terminated.

Signed at Washington, DC, this 3rd day of July, 2006.

Richard Church,

Certifying Officer, Division of Trade Adjustment Assistance.

[FR Doc. E6–11862 Filed 7–24–06; 8:45 am]

BILLING CODE 4510–30–P

DEPARTMENT OF LABOR

Employment and Training Administration

[TA–W–59,585]

Re-Source America, Inc.; Mebane, NC; Notice of Termination of Investigation

Pursuant to section 221 of the Trade Act of 1974, as amended, an investigation was initiated on June 20, 2006 in response to a worker petition filed by a company official on behalf of workers of Re-Source America, Inc., Mebane, North Carolina.

The petitioner has requested that the petition be withdrawn at this time. Consequently, the investigation has been terminated.

Signed at Washington, DC this 28th day of June 2006.

Linda G. Poole,

Certifying Officer, Division of Trade Adjustment Assistance.

[FR Doc. E6–11864 Filed 7–24–06; 8:45 am]

BILLING CODE 4510–30–P

DEPARTMENT OF LABOR

Employment and Training Administration

[TA–W–59,388; TA–W–59,388A]

Rose Art Industries Incorporated; Livingston, NJ; Rose Art Industries, LLC; Wood-Ridge, NJ; Notice of Termination of Investigation

Pursuant to section 221 of the Trade Act of 1974, as amended, an investigation was initiated on May 12, 2006 in response to a petition filed by a company official on behalf of workers at Rose Art Industries Incorporated in Livingston and Wood-Ridge, New Jersey.

The petitioner has requested that the petition be withdrawn. Consequently, the investigation has been terminated.

Signed in Washington, DC, this 21st day of June, 2006.

Linda G. Poole,

Certifying Officer, Division of Trade Adjustment Assistance.

[FR Doc. E6–11855 Filed 7–24–06; 8:45 am]

BILLING CODE 4510–30–P

DEPARTMENT OF LABOR

Employment and Training Administration

[TA–W–59,042]

Smart Papers; Park Falls, WI; Notice of Revised Determination on Reconsideration

By letter dated June 1, 2006, Local 2–0445 USW requested administrative reconsideration regarding the Department's Negative Determination Regarding Eligibility to Apply for Worker Adjustment Assistance, applicable to the workers of the subject firm.

The initial investigation resulted in a negative determination signed on May 16, 2006 was based on the finding that imports of printing paper did not contribute importantly to worker separations at the subject plant and no shift of production to a foreign source occurred. The denial notice was published in the **Federal Register** on June 9, 2006 (71 FR 33488).

The petitioner stated that affected workers lost their jobs as a result of the subject firm's customers increasing imports of paper.

The Department conducted an additional investigation to determine whether imports of printing paper indeed impacted production at the subject firm and consequently caused workers separations. Upon further review of the previous investigation the Department conducted a more extended survey of the subject firm's declining customers. The survey revealed that a significant number of customers increased their reliance on imported printing paper during the relevant period. The imports accounted for a meaningful portion of the subject plant's lost production. The investigation further revealed that production and employment at the subject firm declined during the relevant time period.

In accordance with section 246 the Trade Act of 1974 (26 U.S.C. 2813), as amended, the Department of Labor herein presents the results of its investigation regarding certification of eligibility to apply for alternative trade adjustment assistance (ATAA) for older workers.

In order for the Department to issue a certification of eligibility to apply for ATAA, the group eligibility requirements of section 246 of the Trade Act must be met. The Department has determined in this case that the requirements of section 246 have been met.

A significant number of workers at the firm are age 50 or over and possess skills that are not easily transferable. Competitive conditions within the industry are adverse.

Conclusion

After careful review of the additional facts obtained on reconsideration, I conclude that increased imports of articles like or directly competitive with those produced at Smart Papers, Park Falls, Wisconsin, contributed importantly to the declines in sales or production and to the total or partial separation of workers at the subject firm. In accordance with the provisions of the Act, I make the following certification:

All workers of Smart Papers, Park Falls, Wisconsin who became totally or partially separated from employment on or after March 14, 2005 through two years from the date of this certification, are eligible to apply for adjustment assistance under section 223 of the Trade Act of 1974, and are eligible to apply for alternative trade adjustment assistance under section 246 of the Trade Act of 1974.

Signed in Washington, DC this 11th day of July 2006.

Elliott S. Kushner,

Certifying Officer, Division of Trade Adjustment Assistance.

[FR Doc. E6–11852 Filed 7–24–06; 8:45 am]

BILLING CODE 4510–30–P

DEPARTMENT OF LABOR

Employment and Training Administration

[TA–W–59,587]

Suntron Corporation; Suntron Northeast Operations (NEO); Lawrence, MA; Notice of Termination of Investigation

Pursuant to section 221 of the Trade Act of 1974, as amended, an investigation was initiated on June 20, 2006 in response to a worker petition filed by a company official on behalf of workers of Suntron Corporation, Suntron Northeast Operations (NEO), Lawrence, Massachusetts.

The petitioner has requested that the petition be withdrawn at this time. Consequently, the investigation has been terminated.

Signed at Washington, DC this 7th day of July 2006.

Linda G. Poole,

Certifying Officer, Division of Trade Adjustment Assistance.

[FR Doc. E6–11865 Filed 7–24–06; 8:45 am]

BILLING CODE 4510–30–P

DEPARTMENT OF LABOR

Employment and Training Administration

Investigations Regarding Certifications of Eligibility To Apply for Worker Adjustment Assistance and Alternative Trade Adjustment Assistance

Petitions have been filed with the Secretary of Labor under section 221(a) of the Trade Act of 1974 (''the Act'') and are identified in the Appendix to this notice. Upon receipt of these petitions, the Director of the Division of Trade Adjustment Assistance, Employment and Training Administration, has instituted investigations pursuant to section 221(a) of the Act.

The purpose of each of the investigations is to determine whether the workers are eligible to apply for adjustment assistance under Title II, Chapter 2, of the Act. The investigations will further relate, as appropriate, to the determination of the date on which total or partial separations began or threatened to begin and the subdivision of the firm involved.

The petitioners or any other persons showing a substantial interest in the subject matter of the investigations may request a public hearing, provided such request is filed in writing with the Director, Division of Trade Adjustment Assistance, at the address shown below, not later than August 4, 2006.

Interested persons are invited to submit written comments regarding the subject matter of the investigations to the Director, Division of Trade Adjustment Assistance, at the address shown below, not later than August 4, 2006.

The petitions filed in this case are available for inspection at the Office of the Director, Division of Trade Adjustment Assistance, Employment and Training Administration, U.S. Department of Labor, Room C–5311, 200 Constitution Avenue, NW., Washington, DC 20210.

Signed at Washington, DC, this 12th day of July 2006.

Richard Church,

Acting Director, Division of Trade Adjustment Assistance.

APPENDIX

[TAA petitions instituted between 7/5/06 and 7/7/06]

TA–W	Subject firm (petitioners)	Location	Date of institution	Date of petition
59660	Tower Automotive (Comp)	Bluffton, OH	07/05/06	06/30/06
59661	National Starch and Chemical (Wkrs)	Hazleton, PA	07/05/06	06/30/06
59662	Geneva Steel (Wkrs)	Vineyard, UT	07/05/06	06/27/06
59663	Stapleton Metals Div. (State)	Clarksvile, AR	07/05/06	07/03/06
59664	Federated, Inc. (State)	Milwaukee, OR	07/05/06	07/03/06
59665	Hillerich and Bradsby Co. (Union)	Ontario, CA	07/06/06	07/03/06
59666	Berkline Furniture Manufacturing (Wkrs)	Baldwyn, MS	07/06/06	07/03/06
59667	Acro Service Corporation (State)	Livonia, MI	07/06/06	07/05/06
59668	Richar's Apex (Wkrs)	Morgantown, PA	07/06/06	06/30/06
59669	Cedar Works, LLC (Comp)	Peebles, OH	07/06/06	07/05/06
59670	Preformed Line Products (State)	Rogers, AR	07/06/06	07/05/06
59671	Benard Chaus (Union)	New York City, NY	07/06/06	07/05/06
59672	Anage, Inc. (Union)	New York City, NY	07/06/06	07/05/06
59673	Lending Textile Co., Inc. (Comp)	Williamsport, PA	07/06/06	07/06/06
59674	Bosch-Sumter Plant (Comp)	Sumter, SC	07/07/06	07/05/06
59675	Midwest Plastic Components, Inc. (Comp)	St. Louis Park, MN	07/07/06	07/06/06
59676	Job Store (The) (State)	Longmont, CO	07/07/06	07/06/06
59677	Ray C. Smith (Wkrs)	Beulaville, NC	07/07/06	06/22/06
59678	Dana Corporation (Union)	Andrews, IN	07/07/06	07/06/06
59679	American Standard, Inc. (Comp)	Paintsville, KY	07/07/06	07/06/06
59680	Fiskars Royal Floor Mats (Comp)	Calhoun, GA	07/07/06	07/06/06
59681	Saputo Cheese USA, Inc. (Wkrs)	Peru, IN	07/07/06	06/27/06
59682	Bernzomatic (UNITE)	Medina, NY	07/07/06	06/17/06

[FR Doc. E6–11860 Filed 7–24–06; 8:45 am]

BILLING CODE 4510–30–P

DEPARTMENT OF LABOR

Employment and Training Administration

[TA–W–59,491]

Quality Cleaning Service Employed at Western Graphics Corporation; Eugene, OR; Notice of Termination of Investigation

Pursuant to section 221 of the Trade Act of 1974, as amended, an investigation was initiated on May 31, 2006 in response to a worker petition filed by a company official on behalf of workers at Quality Cleaning Service employed at Western Graphics Corporation, Eugene, Oregon.

The petitioning group of workers is covered by an active certification (TA–W–59,074) which expires on March 30, 2008. This certification was amended on June 7, 2006 to include any employees of Quality Cleaning Service employed at Western Graphics Corporation in Eugene, Oregon. Consequently, further investigation in this case would serve no purpose, and the investigation has been terminated.

Signed at Washington, DC, this 23rd day of June 2006.

Richard Church,

Certifying Officer, Division of Trade Adjustment Assistance.

[FR Doc. E6–11859 Filed 7–24–06; 8:45 am]

BILLING CODE 4510–30–P

DEPARTMENT OF LABOR

Employment and Training Administration

[TA–W–59,227]

The York Group Metal Casket Assembly; Matthews Casket Division; A Subsidiary of Matthews International; Marshfield, MO; Notice of Affirmative Determination Regarding Application for Reconsideration

By letter dated June 18, 2006, a petitioner requested administrative reconsideration of the Department of Labor's Notice of Negative Determination Regarding Eligibility to Apply for Worker Adjustment Assistance, applicable to workers of the subject firm. The denial notice was signed on May 17, 2006, and published in the **Federal Register** on June 9, 2006 (71 FR 33488).

The initial investigation resulted in a negative determination based on the finding that the subject firm did not separate or threaten to separate a significant number or proportion of workers as required by section 222 of the Trade Act of 1974. Significant number or proportion of the workers in a firm or appropriate subdivision thereof, means that at least three workers with a workforce of fewer than 50 workers or five percent of the workers with a workforce of 50 or more.

The Department reviewed the request for reconsideration and has determined that the petitioner has provided additional information. Therefore, the Department will conduct further investigation to determine if the workers meet the eligibility requirements of the Trade Act of 1974.

Conclusion

After careful review of the application, I conclude that the claim is of sufficient weight to justify reconsideration of the Department of Labor's prior decision. The application is, therefore, granted.

Signed at Washington, DC, this 12th of July 2006.

Elliott S. Kushner,

Certifying Officer, Division of Trade Adjustment Assistance.

[FR Doc. E6–11861 Filed 7–24–06; 8:45 am]

BILLING CODE 4510–30–P

DEPARTMENT OF LABOR

Employment and Training Administration

Proposed Collection; Comment Request

ACTION: Notice.

SUMMARY: The Department of Labor, as part of its continuing effort to reduce paperwork and respondent burden, conducts a preclearance consultation program to provide the general public and Federal agencies with an opportunity to comment on proposed and/or continuing collections of information in accordance with the Paperwork Reduction Act of 1995 (PRA95) [44 U.S.C. 3506(c)(2)(A)]. This program helps to ensure that requested data can be provided in the desired format, reporting burden (time and financial resources) is minimized, collection instruments are clearly understood, and the impact of collection requirements on respondents can be properly assessed. Currently, the Employment and Training Administration is soliciting comments concerning the proposed extension of the data collection for the Evaluation of the Individual Training Account Experiment (1205–0441, expires October 31, 2006). A copy of the proposed information collection request (ICR) can be obtained by contacting the office listed below in the addressee section of this notice or at this Web site: *http://www.doleta.gov/Performance/guidance/OMBControlNumber.cfm.*

DATES: Written comments must be submitted to the office listed in the addressee section below on or before September 25, 2006.

ADDRESSES: Janet Javar, Office of Policy Development and Research, Employment and Training Administration, U.S. Department of Labor, Room N–5637, 200 Constitution Ave., NW., Washington, DC 20210. Phone (202) 693–3677 (this is not a toll-free number), fax (202) 693–3584, or e-mail *Javar.Janet@dol.gov.*

SUPPLEMENTARY INFORMATION:

I. Background: The Individual Training Account (ITA) experiment is designed to test different approaches to managing customer choice in the administration of Individual Training Accounts (ITAs). Established under the Workforce Investment Act (WIA) of 1998, ITAs are intended to empower U.S. Department of Labor (DOL) customers to choose the training services they need.

WIA allows state and local offices a great deal of flexibility in deciding how much guidance and financial support they will provide to ITA recipients. The ITA experiment tests three approaches that differ widely in both the resources made available to customers and the involvement of local counselors to guide customer choice. The three ITA approaches range from a highly structured model to a pure voucher model:

- In Approach 1, local counselors steer their customers to training that is expected to yield a high return (in the form of increased earnings) relative to the resources invested in training. Moreover, counselors can approve or disapprove customers' program selections and set the value of the ITA to fund approved selections.
- In Approach 2, customers receive a fixed ITA award. Local counselors then help customers select training that seems appropriate and feasible, given customers' skills and their fixed ITA awards and other financial resources they have available to pay for training.
- In Approach 3, customers are offered a fixed ITA award, but they are allowed to choose any state-approved training option and to formulate their program selections independently if they so desire.

Each of the local sites that participated in the study operated all three of these ITA approaches. Local customers that were determined eligible for an ITA were randomly assigned to one of the approaches.

The evaluation of the ITA experiment includes an analysis of the implementation and operation of the three ITA approaches, based on data collected during three rounds of visits to the six sites participating in the experiment. The evaluation also consists of an analysis of customer outcomes and the returns on the investment in training. This analysis will focus on the differences in customer outcomes, such as training choices, employment, and earnings, generated by the three ITA approaches.

II. Review Focus: The Department of Labor is particularly interested in comments which:

• Evaluate whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility;

• Evaluate the accuracy of the agency's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used;

• Enhance the quality, utility, and clarity of the information to be collected; and

• Minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology, e.g., permitting electronic submissions of responses.

III. Current Actions: This is a notice to extend the collection period that is currently approved by OMB (1205–0446 expires October 31, 2006).

The follow-up survey will collect data items unavailable from administrative records. It will provide more detailed information on training and employment outcomes than UI wage records and more detailed information on household composition and other demographic characteristics. The follow-up survey will be the only source for data on: perceptions of and attitudes toward the services and levels of customer choice provided by each ITA approach, job search behavior after random assignment, and characteristics of post-training jobs.

Type of Review: Extension of a currently approved collection.

Agency: Employment and Training Administration.

Title: Evaluation of the Individual Training Account Experiment

OMB Number: 1205–0441.

Affected Public: Individuals of households.

Total Respondents: 3,840.

Estimated Total Burden Hours: 1,920.

Cite/reference	Total respondents	Frequency	Average time per response	Burden
ITA Follow-up survey	3,840	One time	30 min	1,920 hours.

Total Burden Cost (capital/startup): $0.

Total Burden Cost (operating/maintaining): $0.

Comments submitted in response to this comment request will be summarized and/or included in the request for Office of Management and Budget approval of the information collection request; they will also become a matter of public record.

Dated: July 19, 2006.

Maria K. Flynn,

Administrator, Office of Policy Development and Research.

[FR Doc. E6–11851 Filed 7–24–06; 8:45 am]

BILLING CODE 4510–30–P

DEPARTMENT OF LABOR

Mine Safety and Health Administration

Proposed Information Collection Request Submitted for Public Comment and Recommendations; Escape and Evacuation Plans

ACTION: Notice.

SUMMARY: The Department of Labor, as part of its continuing effort to reduce paperwork and respondent burden conducts a pre-clearance consultation program to provide the general public and Federal agencies with an opportunity to comment on proposed and/or continuing collections of information in accordance with the Paperwork Reduction Act of 1995 (PRA95) [44 U.S.C. 3506(c)(2)(A)]. This program helps to ensure that requested data can be provided in the desired format, reporting burden (time and financial resources) is minimized, collection instruments are clearly understood, and the impact of collection requirements on respondents can be properly assessed.

Currently, the Mine Safety and Health Administration (MSHA) is soliciting comments concerning the extension of the information collection related to the 30 CFR 77.1101; Escape and Evacuation Plans.

DATES: Submit comments on or before September 25, 2006.

ADDRESSES: Send comments to U.S. Department of Labor, Mine Safety and Health Administration, John Rowlett, Director, Management Services Division, 1100 Wilson Boulevard, Room 2134, Arlington, VA 22209–3939. Commenters are encouraged to send their comments on a computer disk, or via Internet e-mail to *Rowlett.John@dol.gov*, along with an original printed copy. Mr. Rowlett can be reached at (202) 693–9827 (voice), or (202) 693–9801 (facsimile).

FOR FURTHER INFORMATION CONTACT: Contact the employee listed in the **ADDRESSES** section of this notice.

SUPPLEMENTARY INFORMATION:

I. Background

Section 77.1101(a) requires operators of surface coal mines and surface work areas of underground coal mines to establish and keep current a specific escape and evacuation plan to be followed in the event of a fire.

Section 77.1101(b) requires that all employees be instructed in current escape and evacuation plans, fire alarm signals, and applicable procedures to be followed in case of fire. The training and record keeping requirements associated with this standard are addressed under OMB No. 1219–0070 (Certificate of Training, MSHA Form 5000–23).

Section 77.1101(c)requires escape and evacuation plans to include the designation and proper maintenance of an adequate means for exiting areas where persons are required to work or travel including buildings, equipment, and areas where persons normally congregate during the work shift.

While escape and evacuation plans are not subject to approval by MSHA district managers, MSHA inspectors evaluate the adequacy of the plans during their inspections of surface coal

mines and surface work areas of underground coal mines.

II. Desired Focus of Comments

MSHA is particularly interested in comments that:

- Evaluate whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility;
- Evaluate the accuracy of the agency's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used;
- Enhance the quality, utility, and clarity of the information to be collected; and
- Minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology, *e.g.*, permitting electronic submissions of responses.

A copy of the proposed information collection request can be obtained by contacting the employee listed in the For Further Information Contact section of this notice, or viewed on the Internet by accessing the MSHA home page (*http://www.msha.gov*) and then choosing ''Statutory and Regulatory Information'' and ''**Federal Register** Documents.''

III. Current Actions

MSHA proposes to continue the information collection requirement related to escape and evacuation plans for surface coal mines and surface work areas of underground coal mines for an additional 3 years. MSHA believes that eliminating these requirements would expose miners to unnecessary risk of injury or death should a fire occur at or near their work location.

Type of Review: Extension.

Agency: Mine Safety and Health Administration.

Title: Escape and Evacuation Plans.

OMB Number: 1219–0051.

Recordkeeping: Indefinite.

Frequency: On occasion.

Affected Public: Business or other for-profit.

Respondents: 348.

Responses: 348.

Total Burden Hours: 1,680 hours.

Total Burden Cost (operating/maintaining): $0.

Comments submitted in response to this notice will be summarized and/or included in the request for Office of Management and Budget approval of the information collection request; they will also become a matter of public record.

Dated at Arlington, Virginia, this 18th day of July, 2006.

David L. Meyer,

Director, Office of Administration and Management.

[FR Doc. E6–11834 Filed 7–24–06; 8:45 am]

BILLING CODE 4510–43–P

DEPARTMENT OF LABOR

Mine Safety and Health Administration

Proposed Information Collection Request Submitted for Public Comment and Recommendations; Daily Inspection of Surface Coal Mine; Certified Person; Reports of Inspection (Pertains to Surface Coal Mines)

ACTION: Notice.

SUMMARY: The Department of Labor, as part of its continuing effort to reduce paperwork and respondent burden conducts a pre-clearance consultation program to provide the general public and Federal agencies with an opportunity to comment on proposed and/or continuing collections of information in accordance with the Paperwork Reduction Act of 1995 (PRA95) [44 U.S.C. 3506(c)(2)(A)]. This program helps to ensure that requested data can be provided in the desired format, reporting burden (time and financial resources) is minimized, collection instruments are clearly understood, and the impact of collection requirements on respondents can be properly assessed.

Currently, the Mine Safety and Health Administration (MSHA) is soliciting comments concerning the extension of the information collection related to the 30 CFR 77.1713; Daily Inspection of Surface Coal Mine; Certified Person; Reports of Inspection.

DATES: Submit comments on or before September 25, 2006.

ADDRESSES: Send comments to U.S. Department of Labor, Mine Safety and Health Administration, John Rowlett, Director, Management Services Division, 1100 Wilson Boulevard, Room 2134, Arlington, VA 22209–3939. Commenters are encouraged to send their comments on a computer disk, or via Internet E-mail to *Rowlett.John@dol.gov*, along with an original printed copy. Mr. Rowlett can be reached at (202) 693–9827 (voice), or (202) 693–9801 (facsimile).

FOR FURTHER INFORMATION: Contact the employee listed in the **ADDRESSES** section of this notice.

SUPPLEMENTARY INFORMATION:

I. Background

Section 77.1713 requires coal mine operators to conduct examinations of each active working area of surface mines, active surface installations at these mines, and preparation plants not associated with underground coal mines for hazardous conditions during each shift. A report of hazardous conditions detected must be entered into a record book along with a description of any corrective actions taken.

II. Desired Focus of Comments

MSHA is particularly interested in comments that:

- Evaluate whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility;
- Evaluate the accuracy of the agency's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used;
- Enhance the quality, utility, and clarity of the information to be collected; and
- Minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology, e.g., permitting electronic submissions of responses.

A copy of the proposed information collection request can be obtained by contacting the employee listed in the **FOR FURTHER INFORMATION CONTACT** section of this notice, or viewed on the Internet by accessing the MSHA home page (*http://www.msha.gov*) and then choosing ''Statutory and Regulatory Information'' and ''**Federal Register** Documents.''

III. Current Actions

Under 30 CFR 77.1713, coal mine operators to conduct examinations of each active working area of surface mines, active surface installations at these mines, and preparation plants not associated with underground coal mines for hazardous conditions during each shift. A report of hazardous conditions detected must be entered into a record book along with a description of any corrective actions taken.

Type of Review: Extension.

Agency: Mine Safety and Health Administration.

Title: Daily Inspection of Surface Coal Mine; Certified Person; Reports of Inspection.

OMB Number: 1219–0083.

Recordkeeping: A report of hazardous conditions detected must be entered into a record book along with a description of any corrective actions taken.

Frequency: On Occasion.

Affected Public: Business or other for-profit.

Respondents: 1,620.

Responses: 492,480.

Total Burden Hours: 738,720 hours.

Total Burden Cost (operating/maintaining): $0.

Comments submitted in response to this notice will be summarized and/or included in the request for Office of Management and Budget approval of the information collection request; they will also become a matter of public record.

Dated at Arlington, Virginia, this 18th day of July 2006.

David L. Meyer,

Director, Office of Administration and Management.

[FR Doc. E6–11845 Filed 7–24–06; 8:45 am]

BILLING CODE 4510–43–P

DEPARTMENT OF LABOR

Mine Safety and Health Administration

Proposed Information Collection Request Submitted for Public Comment and Recommendations; Main Fan Operation and Inspection

ACTION: Notice.

SUMMARY: The Department of Labor, as part of its continuing effort to reduce paperwork and respondent burden conducts a pre-clearance consultation program to provide the general public and Federal agencies with an opportunity to comment on proposed and/or continuing collections of information in accordance with the Paperwork Reduction Act of 1995 (PRA95) [44 U.S.C. 3506 (c)(2)(A)]. This program helps to ensure that requested data can be provided in the desired format, reporting burden (time and financial resources) is minimized, collection instruments are clearly understood, and the impact of collection requirements on respondents can be properly assessed.

Currently, the Mine Safety and Health Administration (MSHA) is soliciting comments concerning the extension of the information collection related to the 30 CFR Section 57.22204, Main Fan Operation.

DATES: Submit comments on or before September 25, 2006.

ADDRESSES: Send comments to U.S. Department of Labor, Mine Safety and Health Administration, John Rowlett, Director, Management Services Division, 1100 Wilson Boulevard, Room 2134, Arlington, VA 22209–3939. Commenters are encouraged to send their comments on a computer disk, or via Internet E-mail to *Rowlett.John@dol.gov*, along with an original printed copy. Mr. Rowlett can be reached at (202) 693–9827 (voice), or (202) 693–9801 (facsimile).

FOR FURTHER INFORMATION: Contact the employee listed in the **ADDRESSES** section of this notice.

SUPPLEMENTARY INFORMATION:

I. Background

Title 30, CFR 57.22204, which is applicable only to specific underground mines that are categorized as gassy requires main fans to have pressure-recording systems. Main fans are to be inspected daily while operating if persons are underground, and certification of the inspection is to be made by signature and date. When accumulations of explosive gases such as methane are not swept from the mine by the main fans, they may reasonably be expected to contact an ignition source. The results are usually disastrous and multiple fatalities may be expected to occur. The main fan requirements of this standard are significantly more stringent than those imposed on non-gassy mines.

II. Desired Focus of Comments

MSHA is particularly interested in comments that:

- Evaluate whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility;
- Evaluate the accuracy of the agency's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used;
- Enhance the quality, utility, and clarity of the information to be collected; and
- Minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology, *e.g.*, permitting electronic submissions of responses.

A copy of the proposed information collection request can be obtained by contacting the employee listed in the **FOR FURTHER INFORMATION CONTACT** section of this notice, or viewed on the Internet by accessing the MSHA home page (*http://www.msha.gov*) and then choosing ''Statutory and Regulatory Information'' and ''Federal Register Documents.''

III. Current Actions

Information collected through the pressure recordings is used by the mine operator and MSHA for maintaining a constant vigil on mine ventilation, and to ensure that unsafe conditions are identified early and corrected. Technical consultants may occasionally review the information when solving problems.

Type of Review: Extension.

Agency: Mine Safety and Health Administration.

Title: Main Fan Operation and Inspection.

OMB Number: 1219–0030.

Recordkeeping: § 57.22204 requires that main fans are to be inspected daily while operating if persons are underground, and certification of the inspection is to be made by signature and date. Certifications and pressure recordings are to be kept for one year and made available to authorized representatives of the Secretary.

Frequency: On Occasion.

Affected Public: Business or other for-profit.

Respondents: 8.

Total Responses: 5,280.

Total Burden Hours: 2,640 hours.

Total Burden Cost: $1,120.

Comments submitted in response to this notice will be summarized and/or included in the request for Office of Management and Budget approval of the information collection request; they will also become a matter of public record.

Dated at Arlington, Virginia, this 18th day of July, 2006.

David L. Meyer,

Director, Office of Administration and Management.

[FR Doc. E6–11847 Filed 7–24–06; 8:45 am]

BILLING CODE 4510–43–P

DEPARTMENT OF LABOR

Mine Safety and Health Administration

Proposed Information Collection Request Submitted for Public Comment and Recommendations; Explosive Materials and Blasting Units

ACTION: Notice.

SUMMARY: The Department of Labor, as part of its continuing effort to reduce paperwork and respondent burden conducts a pre-clearance consultation program to provide the general public

and Federal agencies with an opportunity to comment on proposed and/or continuing collections of information in accordance with the Paperwork Reduction Act of 1995 (PRA95) [44 U.S.C. 3506 (c)(2)(A)]. This program helps to ensure that requested data can be provided in the desired format, reporting burden (time and financial resources) is minimized, collection instruments are clearly understood, and the impact of collection requirements on respondents can be properly assessed.

Currently, the Mine Safety and Health Administration (MSHA) is soliciting comments concerning the extension of the information collection related to the 30 CFR Sections 57.22606(a); Explosive Materials and Blasting Units.

DATES: Submit comments on or before September 25, 2006.

ADDRESSES: Send comments to U.S. Department of Labor, Mine Safety and Health Administration, John Rowlett, Director, Management Services Division, 1100 Wilson Boulevard, Room 2134, Arlington, VA 22209–3939. Commenters are encouraged to send their comments on a computer disk, or via Internet e-mail to *Rowlett.John@dol.gov*, along with an original printed copy. Mr. Rowlett can be reached at (202) 693–9827 (voice), or (202) 693–9801 (facsimile).

FOR FURTHER INFORMATION: Contact the employee listed in the **ADDRESSES** section of this notice.

SUPPLEMENTARY INFORMATION:

I. Background

MSHA evaluates and approves explosive materials and blasting units as permissible for use in the mining industry. However, since there are no permissible explosives or blasting units available that have adequate blasting capacity for some metal and nonmetal gassy mines, Standard 57.22606(a) was promulgated to provide procedures for mine operators to follow for the use of non-approved explosive materials and blasting units. Mine operators must notify MSHA in writing, of all non-approve explosive materials and blasting units to be used prior to their use. MSHA evaluates the non-approved explosive materials and determines if they are safe for blasting in a potentially gassy environment.

II. Desired Focus of Comments

MSHA is particularly interested in comments that:

• Evaluate whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility;

• Evaluate the accuracy of the agency's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used;

• Enhance the quality, utility, and clarity of the information to be collected; and

• Minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology, *e.g.*, permitting electronic submissions of responses.

A copy of the proposed information collection request can be obtained by contacting the employee listed in the For Further Information Contact section of this notice, or viewed on the Internet by accessing the MSHA home page (*http://www.msha.gov*) and then choosing ''Statutory and Regulatory Information'' and ''Federal Register Documents.''

III. Current Actions

MSHA uses the information to determine that the explosives and blasting procedures to be used in a gassy underground mine are safe. Federal inspectors use the notification to ensure that safe procedures are followed.

Type of Review: Extension.

AGENCY: Mine Safety and Health Administration.

Title: Explosive Materials and Blasting Units.

OMB Number: 1219–0095.

Frequency: On occasion.

Affected Public: Business or other for-profit.

Respondents: 1.

Average Time Per Respondent: 1 hour.

Total Burden Hours: 1 hour.

Total Burden Cost (operating/maintaining): $0.

Comments submitted in response to this notice will be summarized and/or included in the request for Office of Management and Budget approval of the information collection request; they will also become a matter of public record.

Dated at Arlington, Virginia, this 18th day of July, 2006.

David L. Meyer,

Director, Office of Administration and Management.

[FR Doc. E6–11848 Filed 7–24–06; 8:45 am]

BILLING CODE 4510–43–P

DEPARTMENT OF LABOR

Mine Safety and Health Administration

Proposed Information Collection Request Submitted for Public Comment and Recommendations; Records of Preshift and Onshift Inspections of Slope and Shaft Areas. (Pertains to Slope and Shaft Sinking Operation at Coal Mines)

ACTION: Notice.

SUMMARY: The Department of Labor, as part of its continuing effort to reduce paperwork and respondent burden conducts a pre-clearance consultation program to provide the general public and Federal agencies with an opportunity to comment on proposed and/or continuing collections of information in accordance with the Paperwork Reduction Act of 1995 (PRA95) [44 U.S.C. 3506(c)(2)(A)]. This program helps to ensure that requested data can be provided in the desired format, reporting burden (time and financial resources) is minimized, collection instruments are clearly understood, and the impact of collection requirements on respondents can be properly assessed.

Currently, the Mine Safety and Health Administration (MSHA) is soliciting comments concerning the extension of the information collection related to the 30 CFR 77.1901—Records of Preshift and Onshift Inspections of Slope and Shaft Areas.

DATES: Submit comments on or before September 25, 2006.

ADDRESSES: Send comments to U.S. Department of Labor, Mine Safety and Health Administration, John Rowlett, Director, Management Services Division, 1100 Wilson Boulevard, Room 2134, Arlington, VA 22209–3939. Commenters are encouraged to send their comments on a computer disk, or via Internet E-mail to *Rowlett.John@dol.gov*, along with an original printed copy. Mr. Rowlett can be reached at (202) 693–9827 (voice), or (202) 693–9801 (facsimile).

FOR FURTHER INFORMATION: Contact the employee listed in the **ADDRESSES** section of this notice.

SUPPLEMENTARY INFORMATION:

I. Background

§ 77.1901 requires operators to conduct examinations of slope and shaft areas for hazardous conditions, including tests for methane and oxygen deficiency, within 90 minutes before each shift, once during each shift, and before and after blasting. The surface area surrounding each slope and shaft is

also required to be inspected for hazards.

§ 77.1901 also requires that records be kept of the results of the inspections. The record includes a description of any hazardous condition found and the corrective action taken to abate it. These records are necessary to ensure that the inspections and tests are conducted in a timely fashion and that corrective action is taken when hazardous conditions are identified, thereby ensuring a safe working environment for the slope and shaft sinking employees. The record is maintained at the mine site for the duration of the operation.

II. Desired Focus of Comments

MSHA is particularly interested in comments that:

- Evaluate whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility;
- Evaluate the accuracy of the agency's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used;
- Enhance the quality, utility, and clarity of the information to be collected; and
- Minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology, *e.g.*, permitting electronic submissions of responses.

A copy of the proposed information collection request can be obtained by contacting the employee listed in the For Further Information Contact section of this notice, or viewed on the Internet by accessing the MSHA home page (*http://www.msha.gov*) and then choosing ''Statutory and Regulatory Information'' and ''**Federal Register** Documents.''

III. Current Actions

Section 77.1901 requires operators to conduct examinations of slope and shaft areas for hazardous conditions, including tests for methane and oxygen deficiency, within 90 minutes before each shift, once during each shift, and before and after blasting. The surface area surrounding each slope and shaft is also required to be inspected for hazards. Section 77.1901 also requires that records be kept of the results of the inspections.

Type of Review: Extension.

Agency: Mine Safety and Health Administration.

Title: Records of Preshift and Onshift Inspections of Slope and Shaft Areas.

OMB Number: 1219–0082.

Recordkeeping: The standard also requires that a record be kept of the results of the inspections. The record includes a description of any hazardous condition found and the corrective action taken to abate it. The record is necessary to ensure that the inspections and tests are conducted in a timely fashion and that corrective action is taken when hazardous conditions are identified, thereby ensuring a safe working environment for the slope and shaft sinking employees. The record is maintained at the mine site for the duration of the operation.

Frequency: On occasion.

Affected Public: Business or other for-profit.

Respondents: 35.

Average Time Per Response: 1.25 hours.

Total Burden Hours: 14,823 hours.

Total Burden Cost: $0

Comments submitted in response to this notice will be summarized and/or included in the request for Office of Management and Budget approval of the information collection request; they will also become a matter of public record.

Dated at Arlington, Virginia, this 18th day of July, 2006.

David L. Meyer,

Director, Office of Administration and Management.

[FR Doc. E6–11850 Filed 7–24–06; 8:45 am]

BILLING CODE 4510–43–P

LEGAL SERVICES CORPORATION

Sunshine Act Meetings of the Board of Directors and Four of the Board's Committees

TIMES AND DATES: The Legal Services Corporation Board of Directors and four of its Committees will meet July 28 and 29, 2006 in the order set forth in the following schedule, with each subsequent meeting commencing shortly after adjournment of the prior meeting.

Meeting Schedule

Friday, July 28, 2006	Time
1. Provision for the Delivery of Legal Services Committee (Provisions Committee).	1:30 p.m.
2. Operations & Regulations Committee.	
Saturday, July 29, 2006	Time
1. Annual Performance Reviews Committee (Performance Reviews Committee).	8:30 a.m.
2. Finance Committee.	
3. Board of Directors.	

LOCATION: The Westin Providence Hotel, One West Exchange Street, Providence, Rhode Island.

STATUS OF MEETINGS: Open, except as noted below.

- *Status: July 29, 2006 Performance Reviews Committee Meeting—Closed.* The meeting of the Performance Reviews Committee may be closed to the public pursuant to a vote of the Board of Directors authorizing the Committee to meet in executive session to consider and act on the annual performance review of the Inspector General. The closing will be authorized by the relevant provision(s) of the Government in the Sunshine Act [5 U.S.C. 552b(c)(10)] and the Legal Services Corporation's corresponding regulation, 45 CFR 1622.5(h). A copy of the General Counsel's Certification that the closing is authorized by law will be available upon request.
- *Status: July 29, 2006 Board of Directors Meeting—Open*, except that a portion of the meeting of the Board of Directors may be closed to the public pursuant to a vote of the Board of Directors to hold an executive session. At the closed session, the Board will consider and may act on the General Counsel's report on litigation to which the Corporation is or may become a party, receive a briefing from the Inspector General (IG),[1] consider and may act on the report of the Annual Performance Reviews Committee on the performance review of the Corporation's IG, and discuss an internal personnel matter. The closing is authorized by the relevant provisions of the Government in the Sunshine Act [5 U.S.C. 552b(c)(10) and 552b(c)(6)] and LSC's implementing regulation 45 CFR 1622.5(h) and 1622.5(e). A copy of the General Counsel's Certification that the closing is authorized by law will be available upon request.

Matters To Be Considered: Friday, July 28, 2006; Provisions Committee—Agenda

1. Approval of agenda.
2. Approval of the Committee's meeting minutes of April 28, 2006.
3. Panel discussion on The Role of Law Schools, Law Students and Legal Services Programs in Encouraging and Enabling Pro Bono and Public Service.

[1] Any portion of the closed session consisting solely of staff briefings does not fall within the Sunshine Act's definition of the term ''meeting'' and, therefore, the requirements of the Sunshine Act do not apply to such portion of the closed session. 5 U.S.C. 552(b)(a)(2) and (b). See also 45 CFR 1622.2 and 1622.3.

Moderator: Karen Sarjeant, LSC Vice President for Programs and Compliance.

The panelists will discuss a range of issues related to involving law schools and law students in the delivery of legal services, including: The importance of teaching pro bono and public service involvement to law students; ways in which law schools have integrated pro bono and public service into their law school curricula, such as pro bono or public service requirements in both voluntary and mandatory programs; examples of successful partnerships between legal services programs and law schools; and panelists' suggestions on ways to expand the involvement of law schools and law students with legal services programs.

- *Panel Members:*

Cindy Adcock, Senior Program Manager—Leadership and Research, Equal Justice Works.

James V. Rowan, Associate Dean for Experiential and Community-Based Education and Research, Northeastern University School of Law.

Ronald W. Staudt, Professor of Law, Associate Vice President for Law, Business and Technology, Chicago-Kent College of Law.

Liz Tobin Tyler, Director of Public Service and Community Partnerships, Feinstein Institute, Roger Williams School of Law.

4. Public comment.

5. Consider and act on other business.

6. Consider and act on adjournment of meeting.

Operations & Regulations Committee—Agenda

Open Session

1. Approval of agenda.

2. Approval of the minutes of the Committee's April 28, 2006 meeting.

3. Consider and act on Draft Notice of Proposed Rulemaking to revise 45 CFR part 1621, Client Grievance Procedure.

a. Staff report.

b. Public comment.

4. Consider and act on rulemaking to revise 45 CFR part 1624, Prohibition Against Discrimination on the Basis of Handicap.

a. Staff report.

b. Public comment.

5. Consider and act on 2007 grant assurances.

a. Staff report.

b. Public comment.

6. Consider and act on other business.

7. Other public comment.

8. Consider and act on adjournment of meeting.

Saturday, July 29, 2006—Performance Reviews Committee—Agenda

Closed Session

1. Approval of agenda.

2. Consider and act on annual performance review of LSC Inspector General.

—Meet with Kirt West.

3. Consider and act on other business.

4. Consider and act on adjournment of meeting.

Finance Committee—Agenda

1. Approval of agenda.

2. Approval of the minutes of the *Committee's* meeting of April 29, 2006.

3. Presentation on LSC's *Financial Reports for the Third Quarter Ending June 30, 2006.*

4. Consider and act on *FY 2006 Revised Consolidated Operating Budget.*

5. Report on the status of the *FY 2007 Appropriations* process.

6. Consider and act on adoption of *FY 2007 Temporary Operating Authority* effective October 1, 2006.

7. Discussion regarding planning for FY 2008 budget.

8. Consider and act on adoption of *Diversified Investment Advisors LSC Thrift Plan Amendment to the Definition of Section 414: Compensation.*

9. Consider and act on adoption of revised budget procedures.

10. Discussion of extent, format, frequency and presentation of financial information to the Committee.

11. Consider and act on other business.

12. Public comment.

13. Consider and act on adjournment of meeting.

Board of Directors—Agenda

Open Session

1. Approval of agenda.

2. Approval of minutes of the *Board's* meeting of April 29, 2006.

3. Approval of minutes of the *Board's telephonic* meeting of May 22, 2006.

4. Approval of minutes of the Executive Session of the *Board's* meeting of April 29, 2006.

5. *Chairman's* Report.

6. *Members'* Reports.

7. *President's* Report.

8. *Inspector General's* Report.

9. Consider and act on the report of the *Committee on Provision for the Delivery of Legal Services.*

10. Consider and act on the report of the *Finance Committee.*

11. Consider and act on the report of the *Operations & Regulations Committee.*

12. Consider and act on follow-up to the Inspector General's Semiannual Report to Congress for the period of October 1, 2005 through March 31, 2006.

13. Consider and act on Board's meeting schedule for calendar year 2007.

14. Consider and act on other business.

15. Public comment.

16. Consider and act on whether to authorize an executive session of the *Board* to address items listed below under *Closed Session.*

Closed Session

17. Consider and act on the report of the *Performance Reviews Committee.*

18. Consider and act on General Counsel's report on potential and pending litigation involving LSC.

19. IG briefing.

20. Discussion of internal personnel matter.

21. Consider and act on motion to adjourn meeting.

FOR FURTHER INFORMATION CONTACT: Patricia D. Batie, Manager of Board Operations, at (202) 295–1500.

Special Needs: Upon request, meeting notices will be made available in alternate formats to accommodate visual and hearing impairments. Individuals who have a disability and need an accommodation to attend the meeting may notify Patricia D. Batie, at (202) 295–1500.

Dated: July 20, 2006.

Victor M. Fortuno,

Vice President for Legal Affairs, General Counsel & Corporate Secretary.

[FR Doc. 06–6470 Filed 7–20–06; 5:06 pm]

BILLING CODE 7050–01–P

NUCLEAR REGULATORY COMMISSION

[Docket No. 50–483]

Union Electric Company; Notice of Consideration of Issuance of Amendment to Facility Operating License, Proposed No Significant Hazards Consideration Determination, and Opportunity for a Hearing

The U.S. Nuclear Regulatory Commission (the Commission) is considering issuance of an amendment to Facility Operating License No. NPF–30, issued to Union Electric Company (the licensee), for operation of the Callaway Plant, Unit 1 (Callaway), located in Callaway County, Missouri.

The proposed amendment would delete the (1) containment cooler condensate monitoring system and (2) containment atmosphere gaseous radioactivity monitor from the limiting

condition for operation in Technical Specification (TS) 3.4.15, ''RCS [reactor coolant system] Leakage Detection Instrumentation.'' The conditions, required actions, completion times, and surveillance requirements in TS 3.4.15 that are associated with both of these monitors would also be deleted from TS 3.4.15. This would remove these two monitors from the TSs as methods to detect an RCS leak rate of 1 gallon per minute (gpm) in 1 hour. The licensee submitted its request to revise the TSs in its application dated July 19, 2006. This application supercedes the licensee's previous two applications dated August 26, 2005, and August 29, 2006, which proposed only to delete the containment atmosphere gaseous radioactivity monitor from TS 3.4.15.

In its application, the licensee requested that the amendment be approved on an exigent basis, in accordance with Paragraph 50.91(a)(6) of Title 10 of the *Code of Federal Regulations* (10 CFR 50.91(a)(6)), by no later than August 8, 2006. The licensee provided the following basis for its request. On July 10, 2006, a Commission's resident inspector at Callaway identified a concern with the licensee using the containment cooler condensate monitoring system for RCS leakage detection in accordance with TS 3.4.15. Specifically, the resident inspector questioned the ability of the system to detect a 1 gpm RCS leak rate in 1 hour based on realistic or normal plant conditions. The licensee stated that in subsequent reviews it was unable to establish that the system could meet this criteria and declared the system inoperable on July 10, 2006, at 15:44 in the afternoon. Because the containment atmosphere gaseous radioactivity monitor had previously been declared inoperable because it could not be shown to meet this criteria, TS 3.4.15, with both monitors being inoperable, requires that the licensee analyze samples of the containment atmosphere, or verify RCS operational leakage is within limits by performance of an RCS watery inventory balance, once every 24 hours, and restore either of the two monitors within 30 days, or start shutting down. Since the licensee does not see the basis to justify that either of the two monitors can meet the criteria for TS 3.4.15, it has requested the exigent amendment to remove the two monitors from TS 3.4.15 and, thus, prevent the plant shut down starting 30 days after the containment cooler condensate monitoring system was declared inoperable (i.e., 30 days after July 10, 2006, at 15:44). The licensee concluded that it could not have reasonably foreseen or anticipated this situation and, therefore, could not have avoided the need for the exigent amendment request.

Before issuance of the proposed license amendment, the Commission will have made findings required by the Atomic Energy Act of 1954, as amended (the Act) and the Commission's regulations.

Pursuant to 10 CFR 50.91(a)(6) for amendments to be granted under exigent circumstances, the NRC staff must determine that the amendment request involves no significant hazards consideration. Under the Commission's regulations in 10 CFR 50.92, this means that operation of the facility in accordance with the proposed amendment would not (1) involve a significant increase in the probability or consequences of an accident previously evaluated; (2) create the possibility of a new or different kind of accident from any accident previously evaluated; or (3) involve a significant reduction in a margin of safety. As required by 10 CFR 50.91(a), the licensee has provided its analysis of the issue of no significant hazards consideration, which is presented below:

(1) Does the proposed change involve a significant increase in the probability or consequences of an accident previously evaluated?

Response: No.

The proposed change has been evaluated and determined to not increase the probability or consequences of an accident previously evaluated. The proposed change does not make any hardware changes and does not alter the configuration of any plant system, structure, or component (SSC). The proposed change will remove the containment cooler condensate monitoring system and the containment atmosphere gaseous radioactivity monitor as an option for meeting the OPERABILITY requirements for TS 3.4.15. The TS will continue to require diverse means of leakage detection equipment, thus ensuring that leakage due to RCS piping cracks would continue to be identified prior to propagating to the point of a pipe break and the plant shutdown accordingly. Therefore, the probability or consequences of an accident previously evaluated are not increased.

(2) Does the proposed change create the possibility of a new or different kind of accident from any accident previously evaluated?

Response: No.

The proposed change does not involve the use or installation of new equipment and the currently installed equipment will not be operated in a new or different manner. No new or different system interactions are created and no new processes are introduced. The proposed changes will not introduce any new failure mechanisms, malfunctions, or accident initiators not already considered in the design and licensing bases. The proposed change does not affect any SSC associated with an accident initiator. Based on this evaluation, the proposed change does not create the possibility of a new or different kind of accident from any accident previously evaluated.

(3) Does the proposed change involve a significant reduction in a margin of safety?

Response: No.

The proposed change does not alter any Reactor Coolant System (RCS) leakage detection components. The proposed change will remove the containment cooler condensate monitoring system and the containment atmosphere gaseous radioactivity monitor as an option for meeting the OPERABILITY requirements for TS 3.4.15. This change is required since the level of radioactivity in the Callaway reactor coolant has become much lower than what was assumed in the [Callaway] FSAR [Final Safety Analysis Report] and the gaseous channel can no longer promptly detect a small RCS leak under normal conditions. Similarly, for certain combinations of essential service water (ESW) temperature, outside air temperature and relative humidity, the containment cooler condensate monitoring system's ability to detect an RCS leak rate of 1 gpm in one hour is also uncertain. The proposed amendment continues to require diverse means of leakage detection equipment with capability to promptly detect RCS leakage. Although not required by TS, additional diverse means of leakage detection capability are available as described in the FSAR Section 5.2.5. Early detection of leakage, as the potential indicator of a crack(s) in the RCS pressure boundary, will thus continue to be in place so that such a condition is known and appropriate actions taken well before any such crack would propagate to a more severe condition. Based on this evaluation, the proposed change does not involve a significant reduction in a margin of safety.

The NRC staff has reviewed the licensee's analysis and, based on this review, it appears that the three standards of 10 CFR 50.92(c) are satisfied. Therefore, the NRC staff proposes to determine that the amendment request involves no significant hazards consideration.

The Commission is seeking public comments on this proposed determination. Any comments received within 14 days after the date of publication of this notice will be considered in making any final determination.

Normally, the Commission will not issue the amendment until the expiration of the 14-day notice period. However, should circumstances change during the notice period, such that failure to act in a timely way would result, for example, in derating or shutdown of the facility, the Commission may issue the license amendment before the expiration of the 14-day notice period, provided that its final determination is that the amendment involves no significant hazards consideration. The final determination will consider all public and State comments received. Should the Commission take this action, it will publish in the **Federal Register** a notice of issuance. The Commission expects that the need to take this action will occur very infrequently.

Written comments may be submitted by mail to the Chief, Rules and Directives Branch, Division of Administrative Services, Office of Administration, U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001, and should cite the publication date and page number of this **Federal Register** notice. Written comments may also be delivered to Room 6D59, Two White Flint North, 11545 Rockville Pike, Rockville, Maryland, from 7:30 a.m. to 4:15 p.m. Federal workdays. Documents may be examined, and/or copied for a fee, at the NRC's Public Document Room, located at One White Flint North, Public File Area O1 F21, 11555 Rockville Pike (first floor), Rockville, Maryland.

The filing of requests for hearing and petitions for leave to intervene is discussed below.

Within 60 days after the date of publication of this notice, the licensee may file a request for a hearing with respect to issuance of the amendment to the subject facility operating license and any person whose interest may be affected by this proceeding and who wishes to participate as a party in the proceeding must file a written request for a hearing and a petition for leave to intervene. Requests for a hearing and a petition for leave to intervene shall be filed in accordance with the Commission's ''Rules of Practice for Domestic Licensing Proceedings and Issuance of Orders'' in 10 CFR part 2. Interested persons should consult a current copy of 10 CFR 2.309, which is available at the Commission's PDR, located at One White Flint North, Public File Area O1 F21, 11555 Rockville Pike (first floor), Rockville, Maryland. Publicly available records will be accessible from the Agencywide Documents Access and Management System's (ADAMS) Public Electronic Reading Room on the Internet at the NRC Web site, *http://www.nrc.gov/reading-rm/doc-collections/cfr/.* If a request for a hearing or petition for leave to intervene is filed by the above date, the Commission or a presiding officer designated by the Commission or by the Chief Administrative Judge of the Atomic Safety and Licensing Board Panel, will rule on the request and/or petition; and the Secretary or the Chief Administrative Judge of the Atomic Safety and Licensing Board will issue a notice of a hearing or an appropriate order.

As required by 10 CFR 2.309, a petition for leave to intervene shall set forth with particularity the interest of the petitioner in the proceeding, and how that interest may be affected by the results of the proceeding. The petition should specifically explain the reasons why intervention should be permitted with particular reference to the following general requirements: (1) The name, address and telephone number of the requestor or petitioner; (2) the nature of the requestor's/petitioner's right under the Act to be made a party to the proceeding; (3) the nature and extent of the requestor's/petitioner's property, financial, or other interest in the proceeding; and (4) the possible effect of any decision or order which may be entered in the proceeding on the requestor's/petitioner's interest. The petition must also identify the specific contentions which the petitioner/requestor seeks to have litigated at the proceeding.

Each contention must consist of a specific statement of the issue of law or fact to be raised or controverted. In addition, the petitioner/requestor shall provide a brief explanation of the bases for the contention and a concise statement of the alleged facts or expert opinion which support the contention and on which the petitioner intends to rely in proving the contention at the hearing. The petitioner/requestor must also provide references to those specific sources and documents of which the petitioner/requestor is aware and on which the petitioner/requestor intends to rely to establish those facts or expert opinion. The petitioner/requestor must provide sufficient information to show that a genuine dispute exists with the applicant on a material issue of law or fact. Contentions shall be limited to matters within the scope of the amendment under consideration. The contention must be one which, if proven, would entitle the petitioner/requestor to relief. A petitioner/requestor who fails to satisfy these requirements with respect to at least one contention will not be permitted to participate as a party.

Those permitted to intervene become parties to the proceeding, subject to any limitations in the order granting leave to intervene, and have the opportunity to participate fully in the conduct of the hearing.

If a hearing is requested, the Commission will make a final determination on the issue of no significant hazards consideration. The final determination will serve to decide when the hearing is held. If the final determination is that the amendment request involves no significant hazards consideration, the Commission may issue the amendment and make it immediately effective, notwithstanding the request for a hearing. Any hearing held would take place after issuance of the amendment. If the final determination is that the amendment request involves a significant hazards consideration, any hearing held would take place before the issuance of any amendment.

Nontimely requests and/or petitions and contentions will not be entertained absent a determination by the Commission or the presiding officer of the Atomic Safety and Licensing Board that the petition, request and/or the contentions should be granted based on a balancing of the factors specified in 10 CFR 2.309(c)(1)(i)–(viii).

A request for a hearing or a petition for leave to intervene must be filed by: (1) First class mail addressed to the Office of the Secretary of the Commission, U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001, Attention: Rulemaking and Adjudications Staff; (2) courier, express mail, and expedited delivery services: Office of the Secretary, Sixteenth Floor, One White Flint North, 11555 Rockville Pike, Rockville, Maryland 20852, Attention: Rulemaking and Adjudications Staff; (3) e-mail addressed to the Office of the Secretary, U.S. Nuclear Regulatory Commission, *HEARINGDOCKET@NRC.GOV;* or (4) facsimile transmission addressed to the Office of the Secretary, U.S. Nuclear Regulatory Commission, Washington, DC, Attention: Rulemakings and Adjudications Staff at (301) 415–1101, verification number is (301) 415–1966. A copy of the request for hearing and petition for leave to intervene should also be sent to the Office of the General Counsel, U.S. Nuclear Regulatory

Commission, Washington, DC 20555–0001, and it is requested that copies be transmitted either by means of facsimile transmission to 301–415–3725 or by e-mail to *OGCMailCenter@nrc.gov.* A copy of the request for hearing and petition for leave to intervene should also be sent to John O'Neill, Esq., Pillsbury Winthrop Shaw Pittman LLP, 2300 N Street, NW., Washington, DC 20037, attorney for the licensee.

For further details with respect to this action, see the application for amendment dated July 19, 2006, which is available for public inspection at the Commission's Public Document Room (PDR), located at One White Flint North, Public File Area O1 F21, 11555 Rockville Pike (first floor), Rockville, Maryland. Publicly available records will be accessible electronically from the Agencywide Documents Access and Management System's (ADAMS) Public Electronic Reading Room on the Internet at the NRC Web site *http://www.nrc.gov/reading-rm.html.* Persons who do not have access to ADAMS or who encounter problems in accessing the documents located in ADAMS should contact the NRC PDR Reference staff by telephone at 1–800–397–4209, or 301–415–4737, or by e-mail to *pdr@nrc.gov.*

Dated at Rockville, Maryland, this 19th day of July 2006.

For the Nuclear Regulatory Commission.

Jack Donohew,

Senior Project Manager, Plant Licensing Branch IV, Division of Operating Reactor Licensing, Office of Nuclear Reactor Regulation.

[FR Doc. E6–11832 Filed 7–24–06; 8:45 am]

BILLING CODE 7590–01–P

NUCLEAR REGULATORY COMMISSION

[Docket No. 40–8102]

Notice of Availability of Environmental Assessment and Finding of No Significant Impact Concerning the ExxonMobil Refining and Supply Company License Amendment Request for Alternate Groundwater Protection Standards at the Highland Reclamation Project

AGENCY: Nuclear Regulatory Commission.

ACTION: Notice of availability of Environmental Assessment and Finding of No Significant Impact.

FOR FURTHER INFORMATION CONTACT: Myron Fliegel, Senior Project Manager, Fuel Cycle Facilities Branch, Division of Fuel Cycle Safety and Safeguards, Office of Nuclear Material Safety and Safeguards, U.S. Nuclear Regulatory Commission, Washington, DC 20555. Telephone: (301) 415–6629; fax number: (301) 415–5955; e-mail: *mhf1@nrc.gov.*

SUPPLEMENTARY INFORMATION:

I. Introduction

The U.S. Nuclear Regulatory Commission (NRC) is considering the issuance of a license amendment to Source Materials License SUA–1139 issued to ExxonMobil Corporation (ExxonMobil, the licensee), to establish alternate groundwater protection standards for chromium, uranium, selenium, and nickel at the Highland Reclamation Project (Highland), located in Converse County, Wyoming. Pursuant to the requirements of 10 CFR part 51 (Environmental Protection Regulations for Domestic Licensing and Related Regulatory Functions), the NRC has prepared an Environmental Assessment (EA) to evaluate the environmental impacts associated with ExxonMobil's proposed modifications to the groundwater protection standards for the Highland site. Based on this evaluation, the NRC has concluded that a Finding of No Significant Impact (FONSI) is appropriate for the proposed licensing action. The license amendment will be issued following the publication of this Notice.

II. Environmental Assessment

Introduction

By letter dated January 16, 2006, ExxonMobil submitted an application to the NRC, requesting an amendment to Source Materials License SUA–1139 for the Highland Reclamation Project to modify the groundwater protection standards for chromium, uranium, selenium, and nickel at the designated point of compliance (POC) wells in the license. In this regard, the NRC's groundwater protection standards in 10 CFR part 40, Appendix A, Criterion 5B(5) specify the following:

5B(5)—At the point of compliance, the concentration of a hazardous constituent must not exceed:

(a) The Commission approved background concentration of that constituent in the groundwater;

(b) The respective value given in the table in paragraph 5C if the constituent is listed in the table and if the background level of the constituent is below the value listed; or

(c) An alternate concentration limit established by the Commission.

Further, groundwater monitoring to comply with the standards established in accordance with the above specifications is required by Criterion 7A.

Consistent with the requirements of Criterion 7A, License Condition (LC) 33 of ExxonMobil's Source Materials License SUA–1139 specifies that a groundwater monitoring program must be conducted at the Highland site and ExxonMobil must comply with the established groundwater protection standards at the designated POC wells for the constituents of interest, including chromium, uranium, selenium, and nickel. For chromium and selenium, the groundwater protection standards for the Highland site were set at the Maximum Contaminant Levels (MCLs) for those constituents in the table in paragraph 5C of 10 CFR part 40, Appendix A. The MCLs for the constituents listed in the table in paragraph 5C were derived from the MCLs established for those constituents in the U.S. Environmental Protection Agency (EPA) National Primary Drinking Water Regulations (NPDWRs). For uranium and nickel, the groundwater protection standards were based on the NRC approved background concentrations for those constituents in the groundwater. However, in the years subsequent to the establishment of the groundwater protection standards in ExxonMobil's license, the MCLs for chromium and selenium in the EPA's NPDWRs have been modified and a new MCL for uranium has been promulgated. The former MCL for nickel in the NPDWRs (0.1 parts per million) was remanded in 1995, and there is now no EPA legal limit on the amount of nickel in drinking water.

In light of the aforementioned changes to the EPA's NPDWRs, ExxonMobil has requested that Source Materials License SUA–1139 be amended to reflect the current MCLs for chromium, selenium, and uranium in the NPDWRs. In this regard, the staff notes that the table in paragraph 5C of 10 CFR part 40, Appendix A, has not yet been revised to reflect the current NPDWRs for chromium, selenium, and uranium. Additionally, even though the MCL for nickel has been remanded and nickel is no longer listed as a regulated contaminant in the NPDWRs, ExxonMobil has requested that its license be modified to incorporate the former MCL for nickel as the groundwater protection standard. In this regard, the NRC notes that the EPA believed that the 0.1 parts per million level for nickel would not cause any potential health problems. In accordance with the requirements of 10 CFR part 40, Appendix A, Criterion 5B(5)(c), the requested modifications to ExxonMobil's license would establish alternate concentration limits for

chromium, uranium, selenium, and nickel for implementation of a groundwater corrective action program in the event a concentration limit is exceeded for any of those constituents at the designated POC wells. Correspondingly, the requested license modifications have the potential for impacting the quality of the groundwater offsite. The NRC staff has evaluated ExxonMobil's request and has developed this EA to support the detailed technical review of ExxonMobil's proposed modifications to the groundwater protection standards for the Highland site, in accordance with the requirements of 10 CFR part 51.

The Proposed Action

The proposed action is to amend NRC Source Materials License SUA–1139 to reflect the current groundwater protection standards for chromium, uranium, and selenium in the EPA NPDWRs and incorporate the former groundwater protection standard for nickel, even though it is no longer a regulated constituent. ExxonMobil's objective in this proposal is to establish groundwater protection standards for the Highland site that are appropriate and consistent with the current standards for chromium, uranium, and selenium in the EPA NPDWRs and conservative with respect to the retention of a groundwater protection standard for nickel. Specifically, ExxonMobil has proposed the following modifications to the groundwater protection standards in LC 33 of the Highland license: Chromium would change from 0.05 milligrams per liter (mg/L) to 0.10 mg/L (the current MCL); uranium would change from the former radiotoxicity value of 0.43 picocuries per liter (pCi/L) (0.00065 mg/L) to the new chemical toxicity MCL of 0.03 mg/L (20 pCi/L); and selenium would change from 0.01 mg/L to 0.05 mg/L (the current MCL). The standard for nickel would change from the 0.02 mg/L background concentration in the groundwater to 0.1 mg/L (the equivalent of the EPA's former MCL of 0.1 parts per million).

The Need for the Proposed Action

The purpose of the proposed action is to establish groundwater protection standards for the Highland site which are consistent with the present or former EPA NPDWRs and correspondingly reflective of the understanding of the health and environmental impacts of specific contaminants in drinking water. With this EA, the NRC is fulfilling its responsibilities under the Atomic Energy Act to make a decision on a proposed license amendment for groundwater protection standards that ensures protection of public health and safety and the environment.

The Environmental Impacts of the Proposed Action

The staff has evaluated the potential impacts associated with ExxonMobil's proposed modifications to the groundwater protection standards for chromium, uranium, selenium, and nickel at the Highland site and determined that those effects are limited to the potential public health and safety impacts related to possible degradation of offsite groundwater quality and water utilization. In this case, the bounding or controlling environmental impact is related to the potential use of that groundwater for drinking water purposes. However, as noted in ExxonMobil's amendment request, ExxonMobil has proposed to establish onsite groundwater protection standards for chromium, uranium, and selenium at the designated POC wells that are reflective of the current EPA NPDWRs for those contaminants. Additionally, even though the drinking water standard for nickel was remanded more than a decade ago, ExxonMobil has proposed a conservative health based standard for nickel that is consistent with the former MCL (0.1 mg/L) for that constituent. Conceptually, the EPA has determined that the drinking water limits in the NPDWRs pose acceptable hazards. The NPDWRs effectively protect the public health and safety and the environment by limiting the concentrations of contaminants in drinking water. The NRC finds that ExxonMobil has proposed onsite groundwater protection standards for chromium, uranium, selenium, and nickel that are adequately protective of public health and safety and the environment. Groundwater protection standards that are consistent with EPA's NPDWRs also satisfy the intent of 10 CFR part 40, Appendix A, Criterion 5B(5)(b), recognizing the outdated table in paragraph 5(C). Further, in the event that any of the proposed groundwater protection standards for chromium, uranium, selenium, and nickel are exceeded, ExxonMobil's license specifies that a corrective action program must be proposed with the objective of returning the concentrations of those constituents to the values mandated in the license. These requirements will minimize the potential for any adverse impacts and further ensure the protection of public health and safety and the environment.

Alternatives to the Proposed Action

As the only reasonable alternative to the proposed action, the staff has considered denial of ExxonMobil's request (*i.e.*, the no action alternative). Denial of ExxonMobil's request would result in no change in environmental impacts. The environmental impacts of the proposed action and the alternative action are similar, though, since both would be protective of offsite sources of drinking water. However, the no action alternative would leave the groundwater protection standards in ExxonMobil's license unnecessarily restrictive and out-of-date with respect to the current EPA NPDWRs and the present understanding of the potential health effects of certain contaminants in drinking water.

Agencies and Persons Consulted

This EA was prepared by NRC staff (Myron Fliegel, Senior Project Manager) and coordinated with the following agency:Wyoming Department of Environmental Quality (WDEQ). NRC staff provided a draft of its EA to WDEQ for review. In electronic correspondence dated June 13, 2006, the WDEQ indicated that it did not have any comments on the draft EA.

The NRC staff has determined that the proposed action will not affect listed species or critical habitat. Therefore, no further consultation is required under Section 7 of the Endangered Species Act. Likewise, the NRC staff has determined that the proposed action is not the type of activity that has potential to cause effects on historic properties. Therefore, no further consultation is required under Section 106 of the National Historic Preservation Act.

Conclusion

The NRC staff has prepared this EA in support of the proposed license amendment to modify the groundwater protection standards for the Highland site. Based upon the analysis contained in this EA, the staff concludes that proposed action will not have a significant effect on public health and safety and the environment.

III. Finding of No Significant Impact

On the basis of this EA, NRC has concluded that there are no significant environmental impacts from the proposed license amendment and has determined that the proposed action does not warrant the preparation of an environmental impact statement. Accordingly, it has been determined that a Finding of No Significant Impact is appropriate.

IV. Further Information

Documents related to this action, including the application for amendment and supporting documentation, are available electronically at the NRC's Electronic Reading Room at *http://www.nrc.gov/reading-rm/adams.html.* From this site, you can access the NRC's Agencywide Document Access and Management System (ADAMS), which provides text and image files of NRC's public documents. The ADAMS accession numbers for the documents related to this notice are as follows:

1. ExxonMobil Refining and Supply. Letter dated January 16, 2006, from D. Burnham, ExxonMobil, to G. Janosko, NRC, requesting amendment to License Condition 33 of Source Materials License SUA–1139 for the Highland Reclamation Project. (ML060260421)

2. E-mail correspondence dated February 7, 2006, from M. Fliegel, NRC, to D. Burnham, ExxonMobil, acknowledging receipt of the ExxonMobil January 16, 2006, license amendment request. (ML060400048)

3. E-mail correspondence dated June 13, 2006, from M. Thiesse, WDEQ, to M. Fliegel, NRC, indicating that WDEQ had no comments on the draft EA. (ML061670212)

If you do not have access to ADAMS or if there are problems in accessing the documents located in ADAMS, contact the NRC's Public Document Room (PDR) Reference staff at 1–800–397–4209, 301–415–4737, or by e-mail to *pdr@nrc.gov.*

These documents may also be viewed electronically on the public computers located at the NRC's PDR, O1 F21, One White Flint North, 11555 Rockville Pike, Rockville, MD 20852. The PDR reproduction contractor will copy documents for a fee.

Dated at Rockville, Maryland, this 18th day of July, 2006.

For the Nuclear Regulatory Commission.

Myron Fliegel,

Senior Project Manager, Fuel Cycle Facilities Branch, Division of Fuel Cycle Safety and Safeguards, Office of Nuclear Material Safety and Safeguards.

[FR Doc. E6–11833 Filed 7–24–06; 8:45 am]

BILLING CODE 7590–01–P

SECURITIES AND EXCHANGE COMMISSION

Proposed Collection; Comment Request

Upon written request, copies available from: Securities and Exchange Commission, Office of Filings and Information Services, Washington, DC 20549.

Extension: Rule 15c3–4; SEC File No. 270–441; OMB Control No. 3235–0497.

Notice is hereby given that pursuant to the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*), the Securities and Exchange Commission (''Commission'') is soliciting comments on the collection of information summarized below. The Commission plans to submit this existing collection of information to the Office of Management and Budget for extension and approval.

Rule 15c3–4 (17 CFR 240.15c3–4) (the ''Rule'') under the Securities Exchange Act of 1934 (15 U.S.C. 78a *et seq.*) (the ''Exchange Act'') requires certain broker-dealers that are registered with the Commission as OTC Derivatives Dealers to establish, document, and maintain a system of internal risk management controls. The Rule sets forth the basic elements for an OTC Derivatives Dealer to consider and include when establishing, documenting, and reviewing its internal risk management control system, which are designed to, among other things, ensure the integrity of an OTC Derivatives Dealer's risk measurement, monitoring, and management process, to clarify accountability at the appropriate organizational level, and to define the permitted scope of the dealer's activities and level of risk. The Rule also requires that management of an OTC Derivatives Dealer must periodically review, in accordance with written procedures, the OTC Derivatives Dealer's business activities for consistency with its risk management guidelines.

The staff estimates that the average amount of time an OTC Derivatives Dealer will spend implementing its risk management control system is 2,000 hours and that, on average, an OTC Derivatives Dealer will spend approximately 200 hours each year reviewing and updating its risk management control system. Currently, five firms are registered with the Commission as an OTC Derivatives Dealer. The staff estimates that approximately one additional OTC Derivatives Dealer may become registered within the next three years. Accordingly, the staff estimates the total cost burden for six OTC Derivatives Dealers to be 1,200 hours annually.

The staff believes that the cost of complying with Rule 15c3–4 will be approximately $205 per hour.[1] This per hour cost is based upon the annual average hourly salary for a compliance manager, who would generally be responsible for initially establishing, documenting, and maintaining an OTC Derivatives Dealer's internal risk management control system. The total annual cost for all affected OTC Derivatives Dealers is estimated to be $136,700, based on one firm spending 2,000 hours to implement an internal risk management control system at $205 per hour within the next three years.

Written comments are invited on: (a) Whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility; (b) the accuracy of the agency's estimate of the burden of the collection of information; (c) ways to enhance the quality, utility, and clarity of the information collected; and (d) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or other forms of information technology. Consideration will be given to comments and suggestions submitted in writing within 60 days of this publication.

Please direct your written comments to R. Corey Booth, Director/Chief Information Officer, Securities and Exchange Commission, c/o Shirley Martinson, 6432 General Green Way, Alexandria, Virginia 22312 or send an e-mail to: *PRA_Mailbox@sec.gov.* Comments must be submitted to OMB within 60 days of this notice.

Dated: July 17, 2006.

Nancy M. Morris,

Secretary.

[FR Doc. E6–11789 Filed 7–24–06; 8:45 am]

BILLING CODE 8010–01–P

[1] Based on the average annual salary for a Compliance Manager based inside New York City of about $69,000, as reflected in SIA Management and Professional Earnings for 2005, modified to account for a 1,800-hour work-year and multiplied by 5.35 to account for bonuses, firm size, employee benefits and overhead.

SECURITIES AND EXCHANGE COMMISSION

Proposed Collections; Comment Request

Upon written request, copies available from: Securities and Exchange Commission, Office of Filings and Information Services, Washington, DC 20549.

Extensions:

Form T–6; OMB Control No. 3235–0391; SEC File No. 270–344.

Form 11–K; OMB Control No. 3235–0082; SEC File No. 270–101.

Form 144; OMB Control No. 3235–0101; SEC File No. 270–112.

Notice is hereby given that pursuant to the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*) the Securities

and Exchange Commission (''Commission'') is soliciting comments on the collections of information summarized below. The Commission plans to submit these existing collections of information to the Office of Management Budget for extension and approval.

Form T–6 (17 CFR 269.9) is a statement of eligibility and qualification for a foreign corporate trustee under the Trust Indenture Act of 1939 (15 U.S.C. 77aaa *et seq.*). Form T–6 provides the basis for determining if a trustee is qualified. Form T–6 takes approximately 17 burden hours per response and is filed by 1 respondent. We estimate that 25% of the 17 total burden hours (4 hours) is prepared by the filer. The remaining 75% of burden hours is prepared by outside counsel.

Form 11–K (17 CFR 249.311) is the annual report designed for use by employee stock purchase, savings and similar plans. Form 11–K provides employees with financial information so that they can assess the performance of the investment vehicle in which their money is invested. Form 11–K takes approximately 30 burden hours per response and is filed by 2,000 respondents for total of 60,000 burden hours.

Form 144 (17 CFR 239.144) is used to report the sale of securities during any three-month period that exceeds 500 shares or other units or has an aggregate sales price in excess of $10,000. Form 144 operates in conjunction with Rule 144. Form 144 takes approximately 2 burden hours per response and is filed by 60,500 respondents for a total of 121,000 total burden hours.

Written comments are invited on: (a) Whether these proposed collections of information are necessary for the proper performance of the functions of the agency, including whether the information will have practical utility; (b) the accuracy of the agency's estimate of the burden imposed by the collections of information; (c) ways to enhance the quality, utility, and clarity of the information collected; and (d) ways to minimize the burden of the collections of information on respondents, including through the use of automated collection techniques or other forms of information technology. Consideration will be given to comments and suggestions submitted in writing within 60 days of this publication.

Please direct your written comments to R. Corey Booth, Director/Chief Information Officer, Securities and Exchange Commission, C/O Shirley Martinson, 6432 General Green Way, Alexandria, Virginia 22312, or send an e-mail to: *PRA_Mailbox@sec.gov.*

July 14, 2006.

Nancy M. Morris,

Secretary.

[FR Doc. E6–11790 Filed 7–24–06; 8:45 am]

BILLING CODE 8010–01–P

SECURITIES AND EXCHANGE COMMISSION

Proposed Collection; Comment Request

Upon written request, copies available from: Securities and Exchange Commission, Office of Filings and Information Services, Washington, DC 20549.

Extension: Rule 17a–11; SEC File No. 270–94; OMB Control No. 3235–0085.

Notice is hereby given that pursuant to the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*), the Securities and Exchange Commission (''Commission'') is soliciting comments on the collection of information summarized below. The Commission plans to submit this existing collection of information to the Office of Management and Budget for extension and approval.

In response to an operational crisis in the securities industry between 1967 and 1970, the Securities and Exchange Commission (''Commission'') adopted Rule 17a–11 (17 CFR 240.17a–11) under the Securities Exchange Act of 1934 (15 U.S.C. 78a *et seq.*) (''Exchange Act'') on July 11, 1971. The Rule requires broker-dealers that are experiencing financial or operational difficulties to provide notice to the Commission, the broker-dealer's designated examining authority (''DEA''), and the Commodity Futures Trading Commission (''CFTC'') if the broker-dealer is registered with the CFTC as a futures commission merchant. Rule 17a–11 is an integral part of the Commission's financial responsibility program which enables the Commission, a broker-dealer's DEA, and the CFTC to increase surveillance of a broker-dealer experiencing difficulties and to obtain any additional information necessary to gauge the broker-dealer's financial or operational condition.

Rule 17a–11 also requires over-the-counter (''OTC'') derivatives dealers and broker-dealers that are permitted to compute net capital pursuant to Appendix E to Exchange Act Rule 15c3–1 to notify the Commission when their tentative net capital drops below certain levels. OTC derivatives dealers must also provide notice to the Commission of backtesting exceptions identified pursuant to Appendix F of Rule 15c3–1 (17 CFR 240.15c3–1f).

Compliance with the Rule is mandatory. The Commission will generally not publish or make available to any person notice or reports received pursuant to Rule 17a–11. The Commission believes that information obtained under Rule 17a–11 relates to a condition report prepared for the use of the Commission, other federal governmental authorities, and securities industry self-regulatory organizations responsible for the regulation or supervision of financial institutions.

Only broker-dealers whose capital declines below certain specified levels or who are otherwise experiencing financial or operational problems have a reporting burden under Rule 17a–11. In 2005, the Commission received approximately 600 notices under this Rule. The Commission did not receive any Rule 17a–11 notices from OTC derivatives dealers or broker-dealers that are permitted to compute net capital pursuant to Appendix E to Exchange Act Rule 15c3–1.

Each broker-dealer reporting pursuant to Rule 17a–11 will spend approximately one hour preparing and transmitting the notice required by the rule. Accordingly, the total estimated annualized burden under Rule 17a–11 is 600 hours.

Written comments are invited on: (a) Whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information has practical utility; (b) the accuracy of the agency's estimate of the burden of the proposed collection of information; (c) ways to enhance the quality, utility, and clarity of the information to be collected; and (d) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or other forms of information technology. Consideration will be given to comments and suggestions submitted in writing within 60 days of this publication.

Comments should be directed to: R. Corey Booth, Director/Chief Information Officer, Securities and Exchange Commission, c/o Shirley Martinson, 6432 General Green Way, Alexandria, VA 22312, or by e-mail to *PRA_Mailbox@sec.gov.* Comments must be submitted to the Office of Management and Budget within 60 days of this notice.

Dated: July 17, 2006.

Nancy M. Morris,

Secretary.

[FR Doc. E6–11791 Filed 7–24–06; 8:45 am]

BILLING CODE 8010–01–P

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–54161; File No. SR–Amex–2006–62]

Self-Regulatory Organizations; American Stock Exchange LLC; Notice of Filing and Order Granting Accelerated Approval of Proposed Rule Change To Extend the Linkage Fee Pilot Program

July 17, 2006.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (the ''Act''),[1] and Rule 19b–4 thereunder,[2] notice is hereby given that on June 28, 2006, the American Stock Exchange LLC (''Amex'' or ''Exchange'') filed with the Securities and Exchange Commission (''Commission'') the proposed rule change as described in Items I and II below, which Items have been substantially prepared by the Exchange. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons and is approving the proposal on an accelerated basis for a pilot period through July 31, 2007.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The Exchange proposes to extend for one (1) year until July 31, 2007, the current pilot program regarding transaction fees for trades executed through the intermarket options linkage (the ''Linkage'') on the Exchange. The text of the proposed rule change is available on the Amex's Web site at (*http://www.amex.com*), at the Amex's Office of the Secretary, and at the Commission's Public Reference Room.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, Amex included statements concerning the purpose of, and basis for, the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item III below. The Exchange has prepared summaries, set forth in Sections A, B, and C below, of the most significant aspects of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

1. Purpose

The Amex is proposing to extend for one (1) year until July 31, 2007, the current pilot program establishing Exchange fees for Principal Orders (''P Orders'') and Principal Acting as Agent Orders (''P/A Orders'') submitted through the Linkage and executed on the Exchange. The fees in connection with the pilot program are scheduled to expire on July 31, 2006.[3]

The current fees applicable to P Orders and P/A Orders executed on the Exchange are as follows: (i) $0.10 per contract side options transaction fee for equity options (exchange traded fund share (''ETF'') options, QQQQ options and trust issued receipt options); (ii) $0.21 per contract side options transaction fee for index options (including MNX and NDX options); (iii) $0.05 per contract side options comparison fee; (iv) $0.05 per contract side options floor brokerage fee; and (v) an options licensing fee for certain ETF and index option products ranging from $0.20 per contract side to $0.05 per contract side depending on the particular ETF or index option.[4] These are the same fees charged to specialists and registered option traders (''ROTs'') for transactions executed on the Exchange. The Exchange does not charge for the execution of Satisfaction Orders sent through the Linkage.

As was the case in the original pilot program and subsequent extensions, the Exchange believes that the existing fees currently charged to Exchange specialists and ROTs should also apply to executions resulting from Linkage Orders.

Based on the experience to date, the Exchange believes that an extension of the pilot program for one (1) year until July 31, 2007 is appropriate.

2. Statutory Basis

The Exchange believes that the proposed rule change is consistent with Section 6(b)(4) of the Act[5] regarding the equitable allocation of reasonable dues, fees and other charges among exchange members and other persons using exchange facilities.

B. Self-Regulatory Organization's Statement on Burden on Competition

The Exchange believes that the proposed rule change does not impose any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants or Others

No written comments were solicited or received with respect to the proposed rule change.

III. Solicitation of Comments

Interested persons are invited to submit written data, views and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act. Comments may be submitted by any of the following methods:

Electronic Comments

- Use the Commission's Internet comment form (*http://www.sec.gov/rules/sro.shtml*); or
- Send an e-mail to *rule-comments@sec.gov.* Please include File Number SR–Amex–2006–62 on the subject line.

Paper Comments

- Send paper comments in triplicate to Nancy M. Morris, Secretary, Securities and Exchange Commission, 100 F Street, NE., Washington, DC 20549–1090.

All submissions should refer to File Number SR–Amex–2006–62. This file number should be included on the subject line if e-mail is used. To help the Commission process and review your comments more efficiently, please use only one method. The Commission will post all comments on the Commission's Internet Web site (*http://www.sec.gov/rules/sro.shtml*). Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying in the Commission's Public Reference Room. Copies of the filing also will be available for inspection and copying at the principal office of the Exchange. All

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] *See* Securities Exchange Act Release No. 52150 (July 28, 2005), 70 FR 44703 (August 3, 2005) (Amex File No. 2005–079).

[4] *See* the Options Licensing Fee section of the Amex Options Fee Schedule available at *http://www.amex.com.*

[5] 15 U.S.C. 78f(b)(4).

comments received will be posted without change; the Commission does not edit personal identifying information from submissions. You should submit only information that you wish to make available publicly. All submissions should refer to File Number SR–Amex–2006–62 and should be submitted on or before August 15, 2006.

IV. Commission's Findings and Order Granting Accelerated Approval of the Proposed Rule Change

After careful consideration, the Commission finds that the proposed rule change is consistent with the requirements of the Act and the rules and regulations thereunder applicable to a national securities exchange,[6] and, in particular, the requirements of Section 6(b) of the Act[7] and the rules and regulations thereunder. The Commission finds that the proposed rule change is consistent with Section 6(b)(4) of the Act, [8] which requires that the rules of the Exchange provide for the equitable allocation of reasonable dues, fees and other charges among its members and other persons using its facilities. The Commission believes that the extension of the Linkage fee pilot until July 31, 2007 will give the Exchange and the Commission further opportunity to evaluate whether such fees are appropriate.

The Commission finds good cause, pursuant to Section 19(b)(2) of the Act,[9] for approving the proposed rule change prior to the thirtieth day after publication of notice thereof in the **Federal Register**. The Commission believes that granting accelerated approval of the proposed rule change will preserve the Exchange's existing pilot program for Linkage fees without interruption as the Exchange and the Commission further consider the appropriateness of Linkage fees.

V. Conclusion

It is therefore ordered, pursuant to Section 19(b)(2) of the Act,[10] that the proposed rule change (SR–Amex–2006–62) is hereby approved on an accelerated basis for a pilot period to expire on July 31, 2007.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[11]

Nancy M. Morris,

Secretary.

[FR Doc. E6–11795 Filed 7–24–06; 8:45 am]

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SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–54169; File No. SR–CBOE–2006–45]

Self-Regulatory Organizations; Chicago Board Options Exchange, Incorporated; Order Granting Approval of Proposed Rule Change Regarding the Review Authority of the Board of Directors

July 18, 2006.

I. Introduction

On May 5, 2006, the Chicago Board Options Exchange, Incorporated (''CBOE'' or ''Exchange'') filed with the Securities and Exchange Commission (''Commission''), pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (''Act'')[1] and Rule 19b–4 thereunder,[2] a proposed rule change to amend its rules to clarify the authority of CBOE's Board of Directors (''Board'') with respect to actions or inactions of CBOE committees and CBOE officers, representatives, or designees. The proposed rule change was published for comment in the **Federal Register** on June 2, 2006.[3] The Commission received one comment letter regarding the proposal[4] and a response to the comment letter from the Exchange.[5] This order approves the proposed rule change.

II. Description of the Proposed Rule Change

The Exchange proposes to add new CBOE Rule 2.2, *Power of the Board to Review Exchange Decisions*, which would provide that, in connection with any delegation to a committee or committees pursuant to Article EIGHTH of CBOE's Certificate of Incorporation (''Certificate''), the Board would retain the power and authority to review, affirm, modify, suspend, or overrule any and all actions or inactions of CBOE committees, and of all officers, representatives, or designees of CBOE. Proposed CBOE Rule 2.2 would not apply to actions taken (or inactions) pursuant to Chapters XVII (*Discipline*), XVIII (*Arbitration*), and XIX (*Hearings and Review*) of the Exchange's Rules, unless specifically provided for in those Rules, or to actions taken by (or inactions of) the Nominating Committee or Executive Committee pursuant to Article IV of the Exchange's Constitution, which sets forth the Exchange's nominations process. In addition, the proposed rule change would amend CBOE Rule 2.1, *Committees of the Exchange*, to clarify that CBOE committees would have, in addition to the powers and duties that are specifically granted in the Exchange's Constitution or Rules, only such other powers and duties as may be delegated to them by the Board.

III. Discussion and Commission Findings

The Commission has carefully reviewed the proposed rule change, the comment letter received, and the CBOE Response Letter, and finds that the proposed rule change is consistent with the requirements of the Act,[6] and, in particular, the requirements of Section 6 of the Act.[7] Specifically, the Commission finds that the proposed rule change is consistent with Section 6(b)(1) of the Act,[8] which requires that an exchange be so organized and have the capacity to be able to carry out the purposes of the Act and to comply, and (subject to any rule or order of the Commission pursuant to Section 17(d)[9] or 19(g)(2)[10] of the Act) to enforce compliance by its members and persons associated with its members, with the provisions of the Act, the rules and regulations thereunder, and the rules of the Exchange.

The commenter asserted that the proposed rule change is unnecessary and generally in conflict with the CBOE Constitution.[11] The commenter also expressed concern that the aim of the proposed rule change is to reduce the influence of member/owners.[12] In response, the Exchange noted that CBOE is a membership corporation formed

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[6] In approving this proposal, the Commission has considered the proposed rule's impact on efficiency, competition, and capital formation. 15 U.S.C. 78c(f).

[7] 15 U.S.C. 78f(b).

[8] 15 U.S.C. 78f(b)(4).

[9] 15 U.S.C. 78s(b)(2).

[10] *Id.*

[11] 17 CFR 200.30–3(a)(12).

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] *See* Securities Exchange Act Release No. 53872 (May 25, 2006), 71 FR 32156.

[4] *See* letter to Nancy M. Morris, Secretary, Commission, from Lawrence J. Blum, Member, CBOE, dated June 5, 2006 (''Blum Letter'').

[5] *See* letter to Nancy Sanow, Assistant Director, Division of Market Regulation (''Division''), Commission, from Jennifer M. Lamie, Managing Senior Attorney, Legal Division, CBOE, dated July 7, 2006 (''CBOE Response Letter'').

[6] In approving this proposed rule change the Commission has considered the proposed rule's impact on efficiency, competition, and capital formation. 15 U.S.C. 78c(f).

[7] 15 U.S.C. 78f.

[8] 15 U.S.C. 78f(b)(1).

[9] 15 U.S.C. 78q(d).

[10] 15 U.S.C. 78s(g)(2).

[11] *See* Blum Letter at 1, *supra* note 4.

[12] *Id.* at 2.

under Delaware's General Corporation Law, which provides that ''the business and affairs of every corporation shall be managed by or under the direction of a board of directors, except as may be otherwise * * * provided in its certificate of incorporation * * * * *''[13] CBOE stated that its Certificate provides that the Board is CBOE's governing body and is vested with all powers necessary for the management of the Exchange's business and affairs, except to the extent that the authority, powers, and duties of such management are delegated to a committee or committees established pursuant to CBOE's Constitution or Rules. According to CBOE, its Certificate and Constitution provide that the Board may establish one or more committees, each of which has the authority, powers, and duties as may be prescribed in the Constitution, Exchange Rules, or by resolution of the Board.[14] CBOE advised that, under these provisions, it has established various committees and has delegated to those committees specific authority, powers, and duties.

CBOE further noted that its Rules provide that each committee ''is subject to the control and supervision of the Board.''[15] CBOE stated, however, that such supervisory power alone does not make explicit the power of the Board to directly modify or overrule the action (or inaction) of a committee when the decision-making authority with respect to the action has been delegated to the committee. CBOE pointed out that the specific delegations contained in its Constitution, Rules, and resolutions vary in scope: Some involve a complete delegation and others involve a limited delegation where the Board has explicitly or implicitly reserved certain authorities. CBOE noted that, although the specific delegations contained in its Constitution, Rules, and Board resolutions vary in describing the scope of the authority delegated, its Board retains the power to revoke, limit, or change a committee delegation, either by rule change or by resolution as appropriate.

The purpose of the proposed rule change, CBOE asserted, is to apply an explicit, uniform standard of review by the Board to the general organizational and administrative structure of CBOE's committees and to resolve any ambiguity that may exist. Thus, CBOE contended that the proposed rule change would clarify that the Board retains the power and authority to review, affirm, modify, suspend or overrule any and all actions or inactions of CBOE committees and officers, representatives, or designees, except as otherwise specified. In CBOE's view, the proposal is consistent with its Certificate and Constitution.

CBOE also advised that the proposed rule change is consistent with the provisions of its Constitution pertaining to the Executive Committee. CBOE stated that the Executive Committee is a committee of the Board that performs the functions of the Board when the Board is not in session or it is not practicable to arrange a meeting of the Board within the time reasonably available. Thus, to the extent that the Executive Committee would take any action pursuant to Article VII, Section 7.2 of its Constitution, CBOE asserted that the Board retains jurisdiction over those matters and may later determine to review, affirm, modify, suspend or overrule any and all actions of the Executive Committee.

In the Commission's view, the Exchange has provided a sufficient basis on which the Commission can find that, as a federal matter under the Act, the Exchange is complying with its own Certificate and Constitution. Further, in approving this proposal, the Commission is relying on CBOE's representation that the proposed rule change is appropriate under Delaware state law.[16] Thus, the Commission believes that the proposed rule change clarifies the Board's review authority by providing an explicit, uniform standard to be applied to any delegation of Board authority, powers, and duties and is consistent with the Act.

IV. Conclusion

For the foregoing reasons, the Commission finds that the proposed rule change is consistent with the Act and the rules and regulations thereunder applicable to a national securities exchange, and in particular, with Section 6(b)(1) of the Act.[17]

It is therefore ordered, pursuant to Section 19(b)(2) of the Act,[18] that the proposed rule change (File No. SR–CBOE–2006–45) is hereby approved.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[19]

Nancy M. Morris,

Secretary.

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[13] *See* CBOE Response Letter, *supra* note 5, at 1.

[14] *Id.*

[15] CBOE Rule 2.1(d).

[16] Telephone conference among Jennifer M. Lamie, Managing Senior Attorney, Legal Division, CBOE; Leah Mesfin, Special Counsel, Division, Commission; and Jan Woo, Attorney, Division, Commission, on July 18, 2006.

[17] 15 U.S.C. 78f(b)(1).

[18] 15 U.S.C. 78s(b)(2).

[19] 17 CFR 200.30–3(a)(12).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–54164; File No. SR–CBOE–2006–60]

Self-Regulatory Organizations; Chicago Board Options Exchange, Incorporated; Notice of Filing and Immediate Effectiveness of Proposed Rule Change To Extend the Duration of CBOE Rule 6.45A(b) Pertaining to Orders Represented in Open Outcry

July 17, 2006.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (the ''Act''),[1] and Rule 19b–4 thereunder,[2] notice is hereby given that on July12, 2006, the Chicago Board Options Exchange, Inc. (''CBOE'' or ''Exchange'') filed with the Securities and Exchange Commission (the ''Commission'') the proposed rule change as described in Items I and II below, which Items have been prepared by the CBOE. The Exchange filed the proposal as a ''non-controversial'' proposed rule change pursuant to Section 19(b)(3)(A)(iii) of the Act[3] and Rule 19b–4(f)(6) thereunder,[4] which renders it effective upon filing with the Commission.[5] The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The CBOE proposes to extend the duration of CBOE Rule 6.45A(b) (the ''Rule''), which relates to the allocation of orders represented in open outcry in equity option classes designated by the Exchange to be traded on the CBOE Hybrid Trading System (''Hybrid'') through October 31, 2006. No other substantive changes are being made to the Rule. The text of the proposed rule change is available on the CBOE's Internet Web site (*http://www.cboe.com*), at the CBOE's principal

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] 15 U.S.C. 78s(b)(3)(A)(iii).

[4] 17 CFR 240.19b–4(f)(6).

[5] The Exchange has asked the Commission to waive the 30-day operative delay required by Rule 19b–4(f)(6)(iii), 17 CFR 240.19b–4(f)(6)(iii). See discussion *infra* Section III.

office, and at the Commission's Public Reference Room.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the CBOE included statements concerning the purpose of, and basis for, the proposed rule change and discussed any comments it received on the proposed rule change. The text of those statements may be examined at the places specified in Item IV below. The Exchange has prepared summaries, set forth in Sections A, B, and C below, of the most significant parts of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and the Statutory Basis for, the Proposed Rule Change

1. Purpose

In March 2005, the Commission approved revisions to CBOE Rule 6.45A related to the introduction of Remote Market-Makers.[6] Among other things, the Rule, pertaining to the allocation of orders represented in open outcry in equity options classes traded on Hybrid, was amended to clarify that only in-crowd market participants would be eligible to participate in open outcry trade allocations. In addition, the Rule was amended to limit the duration of the Rule until September 14, 2005. The duration of the Rule was thereafter extended through July 14, 2006.[7] As the duration period expired on July 14, 2006, the Exchange proposes to extend the effectiveness of the Rule through October 31, 2006.[8]

2. Statutory Basis

The Exchange believes the proposed rule change is consistent with the Act and the rules and regulations under the Act applicable to a national securities exchange and, in particular, the requirements of Section 6(b) of the Act.[9] Specifically, the Exchange believes the proposed rule change is consistent with the Section 6(b)(5)[10] requirements that the rules of an exchange be designed to promote just and equitable principles of trade, to prevent fraudulent and manipulative acts, and, in general, to protect investors and the public interest.

B. Self-Regulatory Organization's Statement on Burden on Competition

The CBOE does not believe that the proposed rule change will impose any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants, or Others

The Exchange neither solicited nor received comments on the proposal.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

Because the foregoing proposed rule change does not (1) significantly affect the protection of investors or the public interest; (2) impose any significant burden on competition; and (3) become operative for thirty days from the date on which it was filed, or such shorter time as the Commission may designate if consistent with the protection of investors and the public interest, it has become effective pursuant to Section 19(b)(3)(A) of the Act[11] and Rule 19b–4(f)(6)[12] thereunder.[13]

A proposed rule change filed under Commission Rule 19b–4(f)(6)[14] normally does not become operative prior to thirty days after the date of filing. The CBOE requests that the Commission waive the 30-day operative delay, as specified in Rule 19b–4(f)(6)(iii), and designate the proposed rule change to become operative immediately to allow the Exchange to continue to operate under the existing allocation parameters for orders represented in open outcry in Hybrid on an uninterrupted basis. The Commission hereby grants the request. The Commission believes that waiving the 30-day operative delay is consistent with the protection of investors and the public interest because such waiver will allow the CBOE to continue to operate under the Rule without interruption. For these reasons, the Commission designates the proposed rule change as effective and operative upon filing.[15]

At any time within 60 days of the filing of such proposed rule change, the Commission may summarily abrogate such rule change if it appears to the Commission that such action is necessary or appropriate in the public interest, for the protection of investors, or otherwise in the furtherance of the purposes of the Act.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act. Comments may be submitted by any of the following methods:

Electronic Comments

- Use the Commission's Internet comment form (*http://www.sec.gov/rules/sro.shtml*); or
- Send an e-mail to *rule-comments@sec.gov*. Please include File No. SR–CBOE–2006–60 on the subject line.

Paper Comments

- Send paper comments in triplicate to Nancy M. Morris, Secretary, Securities and Exchange Commission, Station Place, 100 F Street, NE., Washington, DC 20549–1090.

All submissions should refer to File Number SR–CBOE–2006–60. This file number should be included on the subject line if e-mail is used. To help the Commission process and review your comments more efficiently, please use only one method. The Commission will post all comments on the Commission's Internet Web site (*http://www.sec.gov/rules/sro.shtml*). Copies of the

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[6] *See* Securities Exchange Act Release No. 51366 (March 14, 2005), 70 FR 13217 (March 18, 2005) (SR–CBOE–2004–75).

[7] *See* Securities Exchange Act Release Nos. 52423 (September 14, 2005), 70 FR 55194 (September 20, 2005) (extending the duration of the Rule through December 14, 2005) and 52957 (December 15, 2005), 70 FR 76085 (December 22, 2005) (extending the Rule through March 14, 2006), and 53524 (March 21, 2006), 71 FR 15235 (March 27, 2006) (extending the duration of the Rule through July 14, 2006).

[8] In order to effect proprietary transactions on the floor of the Exchange, in addition to complying with the requirements of the Rule, members are also required to comply with the requirements of Section 11(a)(1) of the Act, 15 U.S.C. 78k(a)(1), or qualify for an exemption. Section 11(a)(1) restricts securities transactions of a member of any national securities exchange effected on that exchange for (i) the member's own account, (ii) the account of a person associated with the member, or (iii) an account over which the member or a person associated with the member exercises discretion, unless a specific exemption is available. The Exchange issued a regulatory circular to members informing them of the applicability of these Section 11(a)(1) requirements when the duration of the Rule was extended until December 14, 2005, March14, 2006 and again on July 14, 2006. *See* CBOE Regulatory Circulars RG05–103 (November 2, 2005), RG06–001 (January 3, 2006) and RG06–34 (April 7, 2006). The Exchange represents that it expects to issue a similar regulatory circular to members reminding them of the applicability of the Section 11(a)(1) requirements with respect to the proposed rule change.

[9] 15 U.S.C. 78f(b).

[10] 15 U.S.C. 78f(b)(5).

[11] 15 U.S.C. 78s(b)(3)(A).

[12] 17 CFR 240.19b–4(f)(6).

[13] Pursuant to Rule 19b–4(f)(6)(iii), the Exchange has given the Commission written notice of its intent to file the proposed rule change, along with a brief description and text of the proposed rule change, at least five business days prior to the date on which the Exchange filed the proposed rule change. *See* 17 CFR 240.19b–4(f)(6)(iii).

[14] 17 CFR 240.19b–4(f)(6).

[15] For the purposes only of waiving the operative date of this proposal, the Commission has considered the proposed rule's impact on efficiency, competition, and capital formation. 15 U.S.C. 78c(f).

submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying in the Commission's Public Reference Room. Copies of such filing also will be available for inspection and copying at the principal office of the CBOE. All comments received will be posted without change; the Commission does not edit personal identifying information from submissions. You should submit only information that you wish to make available publicly. All submissions should refer to File Number SR–CBOE–2006–60 and should be submitted on or before August 15, 2006.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[16]

Nancy M. Morris,

Secretary.

[FR Doc. E6–11794 Filed 7–24–06; 8:45 am]

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SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–54167; File No. SR–NASDAQ–2006–002]

Self-Regulatory Organizations; The NASDAQ Stock Market LLC; Notice of Filing and Order Granting Accelerated Approval of a Proposed Rule Change and Amendment No. 1 Thereto To Add Generic Listing Standards for Index-Linked Securities

July 18, 2006.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (''Act'')[1] and Rule 19b–4 thereunder,[2] notice is hereby given that on March 29, 2006, The NASDAQ Stock Market, LLC (''Nasdaq''), filed with the Securities and Exchange Commission (''Commission'') the proposed rule change as described in Items I and II below, which Items have been prepared by the Nasdaq. On May 5, 2006, the Exchange filed Amendment No. 1 to the proposed rule change.[3] The Commission is publishing this notice to solicit comments on the proposed rule change, as amended, from interested persons and to approve the proposal on an accelerated basis.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

Nasdaq proposes to reflect in the Nasdaq rules the generic listing standards for index-linked notes (''ILNs'') previously approved for NASD pursuant to Rule 19b–4(e) under the Act.[4] These ''generic'' listing standards were recently approved by the Commission for The Nasdaq Stock Market, Inc. (''Nasdaq Market'') as part of the NASD, Inc. rule book,[5] but because their approval came several days after the approval of Nasdaq's registration as a national securities exchange,[6] they were not a part of the Nasdaq rule set included in the Exchange Approval Order.

The text of the proposed rule change is available on Nasdaq's Web site (*http://www.nasdaq.com*), at Nasdaq's principal office, and at the Commission's Public Reference Room. The text of the proposed rule change is also set forth below. Proposed new language is *italicized*; proposed deletions are in [brackets].

* * * * *

4420. Quantitative Designation Criteria

In order to be listed on the Nasdaq National Market, an issuer shall be required to substantially meet the criteria set forth in paragraphs (a), (b), (c), (d), (e), (f), (g), (h), (i), (j), (k), (l), [or] (m) *or (n)* below.

(a)–(l) No change.

(m) Index-Linked Securities

Index-linked securities are securities that provide for the payment at maturity of a cash amount based on the performance of an underlying index or indexes. Such securities may or may not provide for the repayment of the original principal investment amount. Nasdaq may submit a rule filing pursuant to Section 19(b)(2) of the Securities Exchange Act of 1934 to permit the listing and trading of index-linked securities that do not otherwise meet the standards set forth below in paragraphs (1) through (9). Nasdaq will consider for listing and trading pursuant to Rule 19b–4(e) under the Securities Exchange Act of 1934 index-linked securities, provided:

(1) Both the issue and the issuer of such security meet the criteria for other securities set forth in paragraph (f) of this rule, except that the minimum public distribution of the security shall be 1,000,000 units with a minimum of 400 public holders, unless the security is traded in $1,000 denominations, in which case there is no minimum number of holders.

(2) The issue has a term of not less than one (1) year and not greater than ten (10) years.

(3) The issue must be the non-convertible debt of the issuer.

(4) The payment at maturity may or may not provide for a multiple of the positive performance of an underlying index or indexes; however, in no event will payment at maturity be based on a multiple of the negative performance of an underlying index or indexes.

(5) The issuer will be expected to have a minimum tangible net worth in excess of $250,000,000 and to exceed by at least 20% the earnings requirements set forth in paragraph (a)(1) of this Rule. In the alternative, the issuer will be expected: (i) to have a minimum tangible net worth of $150,000,000 and to exceed by at least 20% the earnings requirement set forth in paragraph (a)(1) of this Rule, and (ii) not to have issued securities where the original issue price of all the issuer's other index-linked note offerings (combined with index-linked note offerings of the issuer's affiliates) listed on a national securities exchange or traded through the facilities of Nasdaq exceeds 25% of the issuer's net worth.

(6) The issuer is in compliance with Rule 10A–3 under the Securities Exchange Act of 1934.

(7) Initial Listing Criteria-Each underlying index is required to have at least ten (10) component securities. In addition, the index or indexes to which the security is linked shall either (A) have been reviewed and approved for the trading of options or other derivatives by the Commission under Section 19(b)(2) of the 1934 Act and rules thereunder and the conditions set forth in the Commission's approval order, including comprehensive surveillance sharing agreements for non-U.S. stocks, continue to be satisfied, or (B) the index or indexes meet the following criteria:

(i) Each component security has a minimum market value of at least $75 million, except that for each of the lowest weighted component securities in the index that in the aggregate account for no more than 10% of the weight of the index, the market value can be at least $50 million;

[16] 17 CFR 200.30–3(a)(12).

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] In Amendment No. 1 Nasdaq made minor revisions to the proposed rule text.

[4] 17 CFR 240.19b–4(e).

[5] *See* Securities Exchange Act Release No. 53142 (Jan. 19, 2006), 71 FR 4180 (Jan. 25, 2006).

[6] *See* Securities Act Release No. 53128 (Jan. 13, 2006), 71 FR 3550 (Jan. 23, 2006 ''Exchange Approval Order'').

(ii) Each component security shall have trading volume in each of the last six months of not less than 1,000,000 shares, except that for each of the lowest weighted component securities in the index that in the aggregate account for no more than 10% of the weight of the index, the trading volume shall be at least 500,000 shares in each of the last six months;

(iii) Each index will be calculated based on a capitalization, modified capitalization, price, equal-dollar or modified equal-dollar weighting methodology;

(iv) Indexes based upon the equal-dollar or modified equal-dollar weighting method will be rebalanced at least quarterly;

(v) In the case of a capitalization-weighted or modified capitalization-weighted index, the lesser of the five highest weighted component securities in the index or the highest weighted component securities in the index that in the aggregate represent at least 30% of the total number of component securities in the index, each have an average monthly trading volume of at least 2,000,000 shares over the previous six months;

(vi) No underlying component security will represent more than 25% of the weight of the index, and the five highest weighted component securities in the index do not in the aggregate account for more than 50% of the weight of the index (60% for an index consisting of fewer than 25 component securities);

(vii) 90% of the index's numerical value and at least 80% of the total number of component securities will meet the then current criteria for standardized option trading on a national securities exchange or a national securities association;

(viii) Each component security shall be issued by a 1934 Act reporting company, shall be listed on Nasdaq or another national securities exchange, and shall be an ''NMS stock'' as defined in Rule 600 of SEC Regulation NMS; and

(ix) Foreign country securities or American Depository Receipts (''ADRs'') that are not subject to comprehensive surveillance agreements do not in the aggregate represent more than 20% of the weight of the index.

(8) Index Maintenance and Dissemination—(i) If the index is maintained by a broker-dealer, the broker-dealer shall erect a ''firewall'' around the personnel who have access to information concerning changes and adjustments to the index and the index shall be calculated by a third party who is not a broker-dealer. (ii) The current value of an index will be widely disseminated at least every 15 seconds, except as provided in the next clause (iii). (iii) The values of the following indexes need not be calculated and widely disseminated at least every 15 seconds if, after the close of trading, the indicative value of the index-linked security based on one or more of such indexes is calculated and disseminated to provide an updated value: CBOE S&P 500 BuyWrite Index(sm), CBOE DJIA BuyWrite Index(sm), CBOE Nasdaq-100 BuyWrite Index(sm). (iv) If the value of an index-linked security is based on more than one index, then the composite value of such indexes must be widely disseminated at least every 15 seconds.

(9) Surveillance Procedures. NASD will implement on behalf of Nasdaq written surveillance procedures for index-linked securities. Nasdaq will enter into adequate comprehensive surveillance sharing agreements for non-U.S. securities, as applicable.

(10) Index-linked securities will be treated as equity instruments. Furthermore, for the purpose of fee determination, index-linked securities shall be deemed and treated as Other Securities.

[(m)] *(n)* NASD Regulation

No change.

* * * * *

4450. Quantitative Maintenance Criteria

(a) and (b) No change.

(c) Other Securities Designated Pursuant to Rule 4420(f) *and Index-Linked Securities*

(1) The aggregate market value or principal amount of publicly held units *(except index-linked securities that were listed pursuant to Rule 4420(m))* must be at least $1 million.

(2) Delisting or removal proceedings will be commenced (unless the Commission has approved the continued trading) with respect to any index-linked security that was listed pursuant to paragraph (7)(B) of Rule 4420(m) if any of the standards set forth in paragraph (7)(B) of such rule are not continuously maintained, except that:

(i) the criteria that no single component represent more than 25% of the weight of the index and the five highest weighted components in the index may not represent more than 50% (or 60% for indexes with less than 25 components) of the weight of the Index, need only be satisfied for capitalization weighted and price weighted indexes as of the first day of January and July in each year;

(ii) the total number of components in the index may not increase or decrease by more than 33 1/3% from the number of components in the index at the time of its initial listing, and in no event may be less than ten (10) components;

(iii) the trading volume of each component security in the index must be at least 500,000 shares for each of the last six months, except that for each of the lowest weighted components in the index that in the aggregate account for no more than 10% of the weight of the index, trading volume must be at least 400,000 shares for each of the last six months; and

(iv) in a capitalization-weighted or modified capitalization-weighted index, the lesser of the five highest weighted component securities in the index or the highest weighted component securities in the index that in the aggregate represent at least 30% of the total number of stocks in the index have had an average monthly trading volume of at least 1,000,000 shares over the previous six months.

(3) With respect to an index-linked security that was listed pursuant to paragraph (7)(A) of Rule 4420(m), delisting or removal proceedings will be commenced (unless the Commission has approved the continued trading of the subject index-linked security) if an underlying index or indexes fails to satisfy the maintenance standards or conditions for such index or indexes as set forth by the Commission in its order under Section 19(b)(2) of the 1934 Act approving the index or indexes for the trading of options or other derivatives.

(4) Delisting or removal proceedings will also be commenced with respect to any index-linked security listed pursuant to Rule 4420(m) (unless the Commission has approved the continued trading of the subject index-linked security), under any of the following circumstances:

(i) if the aggregate market value or the principal amount of the securities publicly held is less than $400,000;

(ii) if the value of the index or composite value of the indexes is no longer calculated or widely disseminated on at least a 15-second basis, provided, however, that the values of the following indexes need not be calculated and disseminated at least every 15 seconds if, after the close of trading, the indicative value of any index-linked security linked to one or more of such indexes is calculated and disseminated to provide an updated value: CBOE S&P 500 BuyWrite Index(sm), CBOE DJIA BuyWrite Index(sm), CBOE Nasdaq-100 BuyWrite Index(sm); or

(iii) if such other event shall occur or condition exists which in the opinion of Nasdaq makes further dealings on Nasdaq inadvisable.

(d) through (i) No change.

* * * * *

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, Nasdaq included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. Nasdaq has prepared summaries, set forth in Sections A, B, and C below, of the most significant aspects of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

1. Purpose

The proposed rule change will add generic listing standards to permit the listing and trading of ILNs pursuant to Rule 19b–4(e) under the Act.[7] Rule 19b–4(e) provides that the listing and trading of a new derivative securities product by a self-regulatory organization shall not be deemed a proposed rule change, pursuant to paragraph (c)(1) of Rule 19b–4,[8] if the Commission has approved, pursuant to Section 19(b) of the Act,[9] the self-regulatory organization's trading rules, procedures and listing standards for the product class that would include the new derivatives securities product, and the self-regulatory organization has a surveillance program for the product class.[10]

Nasdaq believes adopting generic listing standards for these securities and applying Rule 19b–4(e) should fulfill the intended objective of that Rule by allowing those ILNs that satisfy the proposed generic listing standards to commence trading, without the need for the public comment period and Commission approval. This has the potential to reduce the time frame for bringing ILNs to market and thereby reduce the burdens on issuers and other market participants. The failure of a particular index to comply with the proposed generic listing standards under Rule 19b–4(e), however, would not preclude a separate filing pursuant to Section 19(b)(2), requesting Commission approval to list and trade a particular ILN.

On January 19, 2006, the Commission approved the proposed ILN standards for the Nasdaq Market.[11] However, on January 13, 2006, the Commission also approved Nasdaq's registration as a national securities exchange, and because of the timing of the two approvals, the ILN standards were not included in the rule set that the Commission approved for Nasdaq. The purpose of this filing is to update the Nasdaq rules accordingly.

The proposed Nasdaq Rule 4420(m) is the same [12] as the corresponding NASD Rule 4420(m) for the Nasdaq Market and will be administered in the same manner as the Nasdaq Market rule is being administered currently. The proposed rule will become operative as soon as Nasdaq begins its operations as an exchange.

In transitioning to Nasdaq the ILNs that are listed on the Nasdaq Market, Nasdaq will deem all such ILNs, without exception, as subject to the continued listing standards in proposed Nasdaq Rules 4450(c)(3) and (c)(4).[13]

Index Securities will be treated as equity instruments and will be subject to all Nasdaq rules governing the trading of equity securities, including trading halt rules. Index Securities will be subject to the same fee schedule as Other Securities listed under Nasdaq Rule 4420(f). The applicable fee schedule is currently codified as Nasdaq Rule 4530.

2. Statutory Basis

Nasdaq believes that the proposed rule change, as amended, is consistent with the provisions of Section 6 of the Act,[14] in general, and with Section 6(b)(5) of the Act,[15] in particular, in that it is designed to prevent fraudulent and manipulative acts and practices, to promote just and equitable principles of trade, remove impediments to a free and open market and a national market system, and, in general, to protect investors and the public interest.

B. Self-Regulatory Organization's Statement on Burden on Competition

Nasdaq does not believe that the proposed rule change, as amended, will result in any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants, or Others

Written comments on the proposed rule change, as amended, were neither solicited nor received.

III. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act. Comments may be submitted by any of the following methods:

Electronic Comments

- Use the Commission's Internet comment form (*http://www.sec.gov/rules/sro.shtml*); or
- Send an e-mail to *rule-comments@sec.gov.* Please include File Number SR–NASDAQ–2006–002 on the subject line.

Paper Comments

- Send paper comments in triplicate to Nancy M. Morris, Secretary, Securities and Exchange Commission, 100 F Street, NE., Washington, DC 20549–1090.

All submissions should refer to File Number SR–NASDAQ–2006–002. This file number should be included on the subject line if e-mail is used. To help the Commission process and review your comments more efficiently, please use only one method. The Commission will post all comments on the Commission's Internet Web site (*http://www.sec.gov/rules/sro.shtml*). Copies of the submission, all subsequent amendments, all written statements

[7] 17 CFR 240.19b–4(e).

[8] 17 CFR 240.19b–4(c)(1).

[9] 15 U.S.C. 78s(b).

[10] *See* Securities Exchange Act Release No. 40761 (Dec. 8, 1998), 63 FR 70952 (Dec. 22, 1998) (the ''19b–4(e) Order'').

[11] *See* NASD Rule 4420(m).

[12] This proposal includes two clarifications. First, it removes a potential conflict between the provisions of Rules 4450(c)(1) and 4450(c)(4)(i) by clarifying that Rule 4450(c)(1) does not apply to ILNs (and, therefore, the minimum aggregate market value or the principal amount of the publicly held securities is $400,000, as stated in Rule 4450(c)(4)(i)). Second, it clarifies in the wording of Rule 4420(m)(9) that despite NASD's obligations pursuant to a regulatory services agreement to surveil Nasdaq trading, Nasdaq itself must enter into appropriate written surveillance sharing agreements. *See* Nasdaq Rule 4420(n). The Commission made minor clarifying changes to this footnote to conform it with Amendment No. 1. Telephone conversation between Alex Kogan, Associate General Counsel, Nasdaq, Florence E. Harmon, Senior Special Counsel, Division of Market Regulation, Commission, and Rahman Harrison, Special Counsel, Division of Market Regulation, Commission on July 17, 2006.

[13] The Commission deleted text from this paragraph pursuant to authorization by Nasdaq staff. Telephone conversation between Alex Kogan, Associate General Counsel, Nasdaq, Florence E. Harmon, Senior Special Counsel, Division of Market Regulation, Commission, and Rahman Harrison, Special Counsel, Division of Market Regulation, Commission on July 17, 2006.

[14] 15 U.S.C. 78f.

[15] 15 U.S.C. 78f(b)(5).

with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying in the Commission's Public Reference Section. Copies of the filing also will be available for inspection and copying at the principal office of the Nasdaq. All comments received will be posted without change; the Commission does not edit personal identifying information from submissions. You should submit only information that you wish to make available publicly. All submissions should refer to File Number SR–NASDAQ–2006–002 and should be submitted on or before August 15, 2006.

IV. Commission's Findings

After careful consideration, the Commission finds that the proposed rule change, as amended, is consistent with the requirements of the Act and the rules and regulations thereunder applicable to a national securities exchange.[16] In particular, the Commission believes that the proposed rule change is consistent with Section 6(b)(5) of the Act [17] in that it is designed to prevent fraudulent and manipulative acts and practices, to promote just and equitable principles of trade, to foster cooperation and coordination with persons engaged in facilitating transactions in securities, and to remove impediments to and perfect the mechanism of a free and open market and a national market system and, in general, to protect investors and the public interest.

The Commission has previously approved the listing and trading of several Index Securities based on a variety of debt structures and market indexes.[18] The Commission has also recently approved, pursuant to Rule 19b–4(e) under the Act,[19] generic listing standards for these securities for the Nasdaq Market,[20] that, in all material respects, are identical to those listing standards proposed by Nasdaq.

Consistent with its previous orders, the Commission believes that generic listing standards proposed by Nasdaq for Index Securities should fulfill the intended objective of Rule 19b–4(e) under the Act by allowing those Index Securities that satisfy the generic listing standards to commence trading without public comment and Commission approval.[21] This has the potential to reduce the time frame for bringing Index Securities to market and thereby reduce the burdens on issuers and other market participants and thus enhances investors' opportunities.

A. Trading of Index Securities

Taken together, the Commission finds that Nasdaq's proposal contains adequate rules and procedures to govern the trading of Index Securities listed pursuant to Rule 19b–4(e) on Nasdaq. All Index Security products listed under the standards will be subject to the full panoply of Nasdaq rules and procedures that now govern the trading of Index Securities and the trading of equity securities on Nasdaq.

Nasdaq has proposed asset/equity requirements and tangible net worth for each Index Security issuer, as well as minimum distribution, principal/market value, and term thresholds for each issuance of Index Securities. As set forth more fully above, Nasdaq's proposed listing criteria include minimum market capitalization, monthly trading volume, and relative weighting requirements for the Index Securities. These requirements are designed to ensure that the trading markets for index components underlying Index Securities are adequately capitalized and sufficiently liquid, and that no one stock dominates the index. The Commission believes that these requirements should minimize the potential for of manipulation. The Commission also finds that the requirement that each component security underlying an Index Security be listed on a national securities exchange or traded through the facilities of a national securities system and subject to last sale reporting will contribute to the transparency of the market for Index Securities. Alternatively, if the index component securities are foreign securities that are not reporting companies, the generic listing standards permit listing of an Index Security if the Commission previously approved the underlying index for trading in connection with another derivative product and if certain surveillance sharing arrangements exist with foreign markets. The Commission believes that if it has previously determined that such index and its components were sufficiently transparent, then Nasdaq may rely on this finding, provided it has comparable surveillance sharing arrangements with the foreign market that the Commission relied on in approving the previous product.

The Commission believes that by requiring pricing information for both the relevant underlying index or indexes and the Index Security to be readily available and disseminated, the proposed listing standards should help ensure a fair and orderly market for Index Securities approved pursuant to such proposed listing standards.

The Commission also believes that the requirement that at least 90 percent of the component securities, by weight, and 80 percent of the total number of Underlying Securities, be eligible individually for options trading will prevent an Index Security from being a vehicle for trading options on a security not otherwise options eligible.

Nasdaq has also developed delisting criteria that will permit Nasdaq to suspend trading of an Index Security in case of circumstances that make further dealings in the product inadvisable. The Commission believes that the delisting criteria will help ensure a minimum level of liquidity exists for each Index Security to allow for the maintenance of fair and orderly markets. Also, Nasdaq will commence delisting proceedings in the event that the value of the underlying index or index is no longer calculated and widely disseminated on at least a 15-second basis.[22]

B. Surveillance

Nasdaq must have surveillance procedures to monitor trading in any products listed under the generic listing standards. An Index Security, just like an ETF, derives its value by reference to the underlying index. For this reason, the Commission has required that markets that list index based securities monitor the qualifications of not just the actual security (*e.g.*, the ETF, index option, or Index Securities), but also of the underlying indexes (and of the index providers). In this regard, the Commission believes that a surveillance

[16] In approving this proposed rule change, the Commission has considered the proposed rule's impact on efficiency, competition, and capital formation. *See* 15 U.S.C. 78c(f).

[17] 15 U.S.C. 78f(b)(5).

[18] *See* Securities Exchange Act Release Nos. 41091 (Feb. 23, 1999), 64 FR 10515 (Mar. 4, 1999) (Narrow-Based Index Options); 42787 (May 15, 2000), 65 FR 33598 (May 24, 2000) (ETFs); and 43396 (Sept. 29, 2000), 65 FR 60230 (Oct. 10, 2000) (TIRs).

[19] 17 CFR 240.19b–4(e).

[20] *See* Securities Exchange Act Release No. 53142 (Jan. 19, 2006), 71 FR 4180 (Jan. 25, 2006).

[21] The Commission notes that the failure of a particular index to comply with the proposed generic listing standards under Rule 19b–4(e) under the Act, however, would not preclude Nasdaq from submitting a separate filing pursuant to Section 19(b)(2) of the Act, requesting Commission approval to list and trade a particular index-linked product.

[22] In the case of the BuyWrite Index Securities, CBOE disseminates a daily index value. Additionally, a daily indicative value for the product is also disseminated.

sharing agreement between a self-regulatory organization proposing to list a stock index derivative product and the self-regulatory organization trading the stocks underlying the derivative product is an important measure for surveillance of the derivative and underlying securities markets. When a new derivative securities product based upon domestic securities is listed and traded on an exchange or national securities association pursuant to Rule 19b–4(e) under the Act, the self-regulatory organization should determine that the markets upon which all of the U.S. component securities trade are members of the Intermarket Surveillance Group (''ISG''), which provides information relevant to the surveillance of the trading of securities on other market centers.[23] For derivative securities products based on previously approved indexes that contain securities from one or more foreign markets, the self-regulatory organization should have a comprehensive Intermarket Surveillance Agreement, as prescribed in the prior Commission order, which covers the securities underlying the new securities product.[24] With respect to indexes not previously approved by the Commission, the Commission finds that Nasdaq's commitment to implement comprehensive surveillance sharing agreements,[25] as necessary, and the definitive requirements that: (i) Each component security shall be a registered reporting company under the Act; and (ii) no more than 20 percent of the weight of the Underlying Index or Underlying Indexes may be comprised of foreign country securities or ADRs not subject to a comprehensive surveillance sharing agreement,[26] will make possible adequate surveillance of trading of Index Securities listed pursuant to the proposed generic listing standards.

With regard to actual oversight, Nasdaq represents that its surveillance procedures are sufficient to detect fraudulent trading among members in the trading of Index Securities pursuant to the proposed generic listing standards.

[23] *See* Securities Exchange Act Release No. 40761 (Dec. 8, 1998), 63 FR 70952 (Dec. 22, 1998) (File No. S7–13–98). ISG was formed on July 14, 1983, to, among other things, coordinate more effectively surveillance and investigative information sharing arrangements in the stock and options markets. The Commission notes that all of the registered national securities exchanges, as well as the NASD, are members of the ISG.

[24] *Id.*

[25] Proposed Nasdaq Rule 4420(m)(9).

[26] Proposed Nasdaq Rules 4420(m)(7)(viii)–(ix).

C. Acceleration

The Commission finds good cause for approving proposed rule change, as amended, prior to the 30th day after the date of publication of notice of filing thereof in the **Federal Register**. The proposal implements generic listing standards substantially identical to those already approved for the Nasdaq Market. The Commission does not believe that Nasdaq's proposal raises any novel regulatory issues. The proposed generic listing criteria should enable more expeditious review and listing of Index Securities by Nasdaq, thereby reducing administrative burdens and benefiting the investing public. Thus, the Commission finds good cause to accelerate approval of the proposed rule change, as amended.

V. Conclusion

It is therefore ordered, pursuant to Section 19(b)(2) of the Act,[27] that the proposed rule change (SR–NASDAQ–2006–002), as amended, is hereby approved on an accelerated basis.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[28]

Nancy M. Morris,

Secretary.

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[27] 15 U.S.C. 78s(b)(2).

[28] 17 CFR 200.30–3(a)(12).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–54170; File No. SR–NASDAQ–2006–006]

Self-Regulatory Organizations; The NASDAQ Stock Market LLC; Order Granting Approval of Proposed Rule Change as Amended by Amendment No. 1 Regarding Restrictions on Affiliations Between Nasdaq and Its Members

July 18, 2006.

I. Introduction

On April 5, 2006, The NASDAQ Stock Market LLC (''Nasdaq''), filed with the Securities and Exchange Commission (''Commission'' or ''SEC''), pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (''Act'')[1] and Rule 19b–4 thereunder,[2] a proposed rule change to govern affiliations between Nasdaq and its members and to limit in certain respects Nasdaq's regulatory authority with respect to members with which it is affiliated On April 12, 2006, Nasdaq filed Amendment No. 1 to the proposed rule change. The proposed rule change, as amended, was published for comment in the **Federal Register** on April 28, 2006.[3] The Commission received three comment letters on the proposal.[4] On June 20, 2006, Nasdaq filed a response to comments.[5] This order approves the proposed rule change, as amended.

II. Description of Proposal

Nasdaq Rule 2140 would prohibit Nasdaq or an entity with which it is affiliated from acquiring or maintaining an ownership interest in, or engaging in a business venture[6] with, a Nasdaq member or an affiliate of a Nasdaq member in the absence of an effective filing with the Commission under Section 19(b) of the Act.[7] Further, the rule would prohibit a Nasdaq member from becoming an affiliate[8] of Nasdaq or an affiliate of an entity affiliated with Nasdaq in the absence of an effective filing under Section 19(b) of the Act.[9] However, Nasdaq's rule excludes from this restriction two types of affiliations.

First, a Nasdaq member or an affiliate of a Nasdaq member could acquire or hold an equity interest in The Nasdaq Stock Market, Inc. that is permitted pursuant to Nasdaq Rule 2130 without filing such acquisition or holding under Section 19(b) of the Act.[10] Second, Nasdaq or an entity affiliated with Nasdaq could acquire or maintain an

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] *See* Securities Exchange Act Release No. 53697 (April 21, 2006), 71 FR 25265.

[4] *See* e-mail from Richard Gold, Missoula, MT, dated April 28, 2006 (''Gold E-mail''); and letters to Nancy M. Morris, Secretary, Commission from George R. Kramer, Deputy General Counsel, Securities Industry Association, dated May 19, 2006 (''SIA Letter''), and Kim Bang, Bloomberg L.P., dated May 17, 2006 (''Bloomberg Letter''). One commenter expressed general concerns about already approved Nasdaq rules requiring members to be broker-dealers, and did not address the substance of the proposal. *See* Gold E-mail.

[5] *See* letter to Nancy M. Morris, Secretary, Commission, from Edward S. Knight, Executive Vice President and General Counsel, Nasdaq, dated June 20, 2006 (''Nasdaq Response Letter'').

[6] Nasdaq defines a ''business venture'' as an arrangement under which (A) Nasdaq or an entity with which it is affiliated and (B) a Nasdaq member or an affiliate of a Nasdaq member, engage in joint activities with the expectation of shared profit and a risk of shared loss from common entrepreneurial efforts.

[7] 15 U.S.C. 78s(b).

[8] Nasdaq defines the term ''affiliate'' under proposed Rule 2140 as having the meaning specified in Commission Rule 12b–2 under the Act; provided, however, that for purposes of Nasdaq Rule 2140, one entity shall not be deemed to be an affiliate of another entity solely by reason of having a common director.

[9] 15 U.S.C. 78s(b).

[10] Nasdaq Rule 2130 provides that ''[n]o member or person associated with a member shall be the beneficial owner of greater than twenty percent (20%) of the then-outstanding voting securities of The Nasdaq Stock Market, Inc.''

ownership interest in, or engage in a business venture with, an affiliate of the Nasdaq member without filing such affiliation under Section 19(b) of the Act, if there were information barriers between the member and Nasdaq and its facilities. These information barriers would have to prevent the member from having an ''informational advantage'' concerning the operation of Nasdaq or its facilities or ''knowledge in advance of other Nasdaq members'' of any proposed changes to the operations of Nasdaq or its trading systems. Further, Nasdaq may only notify an affiliated member of any proposed changes to its operations or trading systems in the same manner as it notifies non-affiliated members. Nasdaq and its affiliated member may not share employees, office space, or data bases. Finally, the Nasdaq Regulatory Oversight Committee must certify, annually, that Nasdaq has taken all reasonable steps to implement, and comply with, the rule.

Finally, Nasdaq proposed to amend several of its disciplinary rules to provide that Nasdaq will not consider appeals of disciplinary actions by affiliated members. Instead, after an initial decision is rendered, the affiliated member could appeal directly to the Commission.

III. Summary of Comments

The Commission received three comments on the proposed rule change, as amended.[11] Two commenters believed that the rule was unclear and questioned whether it would be consistent with the requirements of Section 19(b) of the Act.[12] Specifically, one commenter believed that the rule would curtail the Commission's ability to review Nasdaq rules and provide an exemption to a broad category of core Nasdaq facilities from Commission review.[13] The other commenter believed that, by carving out many types of business arrangements (licensing agreements, provision of transactional services or data etc.) as outside of the definition of ''business venture,'' certain provisions of agreements ''that today rise to the level of 'SRO rules' subject to Section 19(b) safeguards might potentially be avoided by simply shifting them to a new affiliate.'' [14]

Both commenters also questioned why Nasdaq's proposed exemptions from the general rule requiring a filing with the Commission did not include all of the conditions set forth in an earlier Commission order (the ''FSI Order''),[15] which allowed NASD and Nasdaq to develop trade analytics through a separate subsidiary without filing proposed rule changes on behalf of the subsidiary.[16] The commenters noted that the Commission granted the relief at issue in the FSI Order on several conditions ''designed to ensure that (a) the activities of FSI would not involve core functions of Nasdaq and (b) FSI would not obtain any informational benefit from Nasdaq that would give it a commercial advantage over its competitors.'' [17] By failing to cite the FSI Order and adhering to its conditions, one commenter believed that the proposal would allow business ventures involving affiliates to be executed without a filing with the Commission even where such agreements involved ''fundamentally important or core services,'' allowing the business venture to ''benefit from Nasdaq's monopoly powers'' with respect to such services.[18]

Finally, one commenter raised concerns with the broad exception to the filing requirement when certain information barriers exist between Nasdaq and its member or affiliate, noting that ''[i]t is not clear how, absent a filing explaining how such conditions would be met in a particular business venture, anyone on the outside could determine in any given instance if Nasdaq and its venture partner in fact meet the requirements.'' [19]

IV. Nasdaq's Response to Comments

On June 20, 2006, Nasdaq responded to the issues raised by the commenters.[20] As a general preface, Nasdaq stated that it believed the concerns raised by the commenters reflected a ''fundamental misunderstanding of the proposed rule change.'' [21] Nasdaq explained that it designed the proposal to stipulate that Nasdaq would be required to file a rule change regarding a proposed affiliation under the circumstances described in the rule ''even if the Act does not require it to do so'' to address a concern that there may be conditions under which the Commission would have a ''strong policy interest in reviewing an affiliation between a self-regulatory organization * * * and one of its members.'' [22]

Nasdaq, citing the language of Rule 19b–4 referring to ''facilities of the self-regulatory organization'' and the definition of ''facility'' in Section 3(a)(2) of the Act,[23] explained that it was well-established that the rule filing obligations of Section 19(b) of the Act are triggered by changes to an SRO's facilities.[24] Conversely, Nasdaq stated, ''business ventures that do not constitute SRO facilities, such as the state-regulated insurance brokerages that Nasdaq owns, are not subject to Section 19 of the Act.'' [25] At the same time, contrary to the concerns expressed in the SIA Letter about Nasdaq avoiding the application of Section 19 by shifting certain operations to an affiliate, to the extent such activities constituted the operations of a facility, Section 19 would apply and require a filing, regardless of where the operations were located.[26]

Nasdaq makes clear that it was neither the intent nor effect of the proposal to alter the Section 19 rule filing obligations applicable to Nasdaq. Rather, proposed Rule 2140(a) imposes a rule filing obligation where Nasdaq or one of its affiliates seeks to ''acquire or maintain an ownership interest in, or engage in a business venture with, a Nasdaq member or an affiliate'' and proposed Rule 2140(b) makes clear that ''[n]othing *in this rule* shall prohibit, or require a filing'' (emphasis added) in the circumstances described in that part of the rule.[27] Nasdaq explains that the rule does not purport to describe the circumstances under which Section 19 of the Act would require a filing, and that in any event, Nasdaq could not by rule ''place limits on the requirements of Section 19 in the absence of an exercise of the Commission's exemptive authority under Section 36 of the Act * * *.'' [28] Nasdaq further states that the exceptions in Rule 2140(b) are exceptions only to the requirement in Rule 2140(a) and that ''[w]hether Section 19 would require a filing in such circumstances would depend on the nature of the business venture, as it does today.'' [29]

Nasdaq provided a hypothetical example to illustrate its point. According to Nasdaq, if the Nasdaq Stock Market Inc. and a diversified

[11] *See supra* note 4.

[12] *See* SIA Letter *supra* note 4; Bloomberg Letter *supra* note 4.

[13] *See* Bloomberg Letter *supra* note 4, at 1–2.

[14] *See* SIA Letter *supra* note 4, at 3.

[15] *See* Securities Exchange Act Release No. 42713 (April 24, 2000) (2000 SEC LEXIS 807).

[16] *See* Bloomberg Letter *supra* note 4, at 2; *See also* SIA Letter *supra* note 4, at 3.

[17] *See* Bloomberg Letter *supra* note 4, at 2. *See also* SIA Letter *supra* note 4, at 3.

[18] *See* Bloomberg Letter *supra* note 4, at 3.

[19] *See* SIA Letter *supra* note 4, at 2.

[20] *See* Nasdaq Response Letter *supra* note 5.

[21] *See* Nasdaq Response Letter *supra* note 5, at 1.

[22] *Id.*

[23] 15 U.S.C. 78c(a)(2).

[24] *See* Nasdaq Response Letter *supra* note 5, at 1–2.

[25] *Id.* at 2.

[26] *Id.* at 2, n.3.

[27] *Id.* at 2.

[28] *Id.*

[29] *Id.* at 3.

financial services holding company that also owned a Nasdaq member established a joint venture for trading precious metals in the spot market or for brokering commercial real estate in lower Manhattan, Nasdaq explained, the underlying activity would not be subject to a filing requirement under Section 19 because the joint venture would engage in activities not subject to Commission jurisdiction and would not be operated as a facility of Nasdaq. Although the joint venture would arguably result in an indirect affiliation between Nasdaq and one of its members, Nasdaq pointed out that its rule would not require a filing if the specified conditions of separation between the parties were in place. Nasdaq contrasted this scenario with a joint venture in which the hypothetical financial services holding company in question sold Nasdaq market data, in which case Section 19 of the Act would require a filing, regardless of its Rule 2140.

V. Discussion and Commission Findings

The Commission has carefully reviewed the proposed rule change, as amended, the comment letters, and the Nasdaq Response Letter, and finds that the proposed rule change, as amended, is consistent with the requirements of the Act [30] and the rules and regulations thereunder applicable to a national securities exchange.[31] In particular, the Commission finds that the proposed rule change, as amended, is consistent with the requirements of Section 6(b)(5) of the Act,[32] which requires that the an exchange have rules designed, among other things, to promote just and equitable principles of trade, to remove impediments and to perfect the mechanism of a free and open market and a national market system, and in general, to protect investors and the public interest.

The Commission recently stated that it ''is concerned about [the] potential for unfair competition and conflicts of interest between an exchange's self-regulatory obligations and its commercial interests that could exist if an exchange were to otherwise become affiliated with one of its members, as well as the potential for unfair competitive advantage that the affiliated member could have by virtue of informational or operational advantages, or the ability to receive preferential treatment.'' [33] The Commission believes that Nasdaq's proposed rule is designed to mitigate these concerns. Nasdaq's rule makes it clear that affiliations between Nasdaq and its members must be filed with the Commission unless such affiliation is due to a member's interest in The Nasdaq Stock Market, Inc. permitted under Rule 2130 or conforms to the specified information barrier requirements.

In its response letter, Nasdaq correctly noted that its rule does not, in any way, limit the Commission's authority under the Act. If Nasdaq entered into an affiliation with a member (or any other party) that resulted in a change to a Nasdaq rule or the need to establish new Nasdaq rules, as defined under the Act, then such affiliation would be subject to the rule filing requirements of Section 19(b) of the Act. Nasdaq Rule 2140 would have no affect on this statutory rule filing requirement.

Finally, the Commission believes that Nasdaq's revisions to certain disciplinary rules are consistent with the Act and are designed to protect the integrity of the disciplinary process. These modifications, which specify that Nasdaq may not be involved in certain disciplinary actions involving members with which it is affiliated, insulate Nasdaq's role as an SRO from its commercial interests.

VI. Conclusion

It is therefore ordered, pursuant to Section 19(b)(2) of the Act,[34] that the proposed rule change (SR–Nasdaq–2006–006) be, and hereby is, approved, as amended.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[35]

Nancy M. Morris,

Secretary.

[FR Doc. E6–11796 Filed 7–24–06; 8:45 am]

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[30] 15 U.S.C. 78f.

[31] In approving this proposed rule change, the Commission has considered the proposed rule's impact on efficiency, competition, and capital formation. *See* U.S.C. 78c(f).

[32] 15 U.S.C. 78f(b)(5).

[33] *See* Securities Exchange Act Release No. 53382 (February 27, 2006), 71 FR 11251 (March 6, 2006) (order approving the New York Stock Exchange's merger with the Pacific Exchange).

[34] 15 U.S.C. 78s(b)(2).

[35] 17 CFR 200.30–3(a)(12).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–54166; File No. SR–NYSE Arca–2006–45]

Self-Regulatory Organizations; NYSE Arca, Inc.; Notice of Filing and Immediate Effectiveness of Proposed Rule Change and Amendment No. 1 Thereto To Permit the Listing and Trading of Quarterly Options Series

July 18, 2006.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (''Act'') [1] and Rule 19b–4 thereunder,[2] notice is hereby given that on July 12, 2006, NYSE Arca, Inc. (''Exchange'' or ''NYSE Arca'') filed with the Securities and Exchange Commission (''Commission'') the proposed rule change as described in Items I and II below, which Items have been substantially prepared by the Exchange. The Exchange has designated this proposal as non-controversial under Section 19(b)(3)(A)(iii) of the Act [3] and Rule 19b–4(f)(6) thereunder,[4] which renders the proposed rule change effective upon filing with the Commission. The Exchange filed Amendment No. 1 to the proposed rule change on July 18, 2006.[5] The Commission is publishing this notice to solicit comments on the proposed rule change, as amended, from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The Exchange proposes to amend its rules to permit the listing and trading of quarterly options series.[6] The text of the proposed rule change, as amended, is set forth below. Proposed new language is in *italics*; language proposed to be deleted is in [brackets].

* * * * *

Rules of NYSE Arca, Inc.

Rule 5. Option Contracts Traded on the Exchange

* * * * *

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] 15 U.S.C. 78s(b)(3)(A)(iii).

[4] 17 CFR 240.19b–4(f)(6).

[5] In Amendment No. 1, a partial amendment, the Exchange made minor modifications to the proposed rule text.

[6] This proposal is substantially identical to a recently approved proposal by the International Securities Exchange (''ISE'') to list Quarterly Options Series on a pilot basis. *See* Securities Exchange Act Releases No. 53857 (May 24, 2006), 71 FR 31246 (June 1, 2006) (notice of filing); and 54113 (July 7, 2006), 71 FR 39694 (July 13, 2006) (approval order).

Rule 5.10. Applicability, Definitions and References

(a) No change.

(b) Definitions. Unless the context indicates otherwise, the following terms as used in this Section 3 shall have the meanings specified below.

(1)–(25) No change.

(26) The term ''Quarterly Options Series'' means, for the purposes of this Rule 5, a series in an index options class that is approved for listing and trading on the Exchange in which the series is opened for trading on any business day and that expires at the close of business on the last business day of a calendar quarter.

* * * * *

Rule 5.15. Position Limits for Broad-Based Index Options

(a)–(d) No change.

(e) Positions in One Week Option[s] Series *and Quarterly Options Series* shall be aggregated with positions in options contracts on the same index.

Rule 5.16. Position Limits for Industry (Narrow-Based) Index Options

(a)–(c) No change.

(d) Position*s* in One Week Option Series *and Quarterly Options Series* shall be aggregated with positions in options contracts on the same index.

(e)–(g) No change.

* * * * *

Rule 5.19. Terms of Index Option Contracts

(a) General

(1)–(2) No change.

(3) Expiration Months. Index Option contracts may expire at three (3) month intervals or in consecutive months. The Exchange may list up to six (6) months at any one time, but will not list index options that expire more than twelve (12) months out.

One Week Option Series Pilot Program. Notwithstanding the preceding restriction, after an index option class has been approved for listing and trading on the Exchange, the Exchange may open for trading on any Friday that is a business day (''One Week Option Opening Date'') series of options on that class that expire at the close of business on the next Friday that is a business day (''One Week Option Expiration Date''). If the Exchange is not open for business on a Friday, the One Week Option Opening Date will be the first business day immediately prior to that Friday. Similarly, if the Exchange is not open for business on a Friday, the One Week Option Expiration Date will be the first business day immediately prior to that Friday. One Week Option Series shall be P.M. settled, except for One Week Option Series on indexes. One Week Option Series on indexes shall be A.M. settled.

The Exchange may select up to five currently listed option classes on which One Week Option Series may be opened on any One Week Option Opening Date. In addition, to the five-option class restriction, the Exchange also may list One Week Option Series on any option classes that are selected by other securities exchanges that employ a similar Pilot Program under their respective rules. For each index option class eligible for participation in the One Week Option Series Pilot Program, the Exchange may open up to five One Week Option Series index options for each expiration date in that class. The strike price of each One Week Option Series will be fixed at a price per share, with at least two strike prices above and two strike prices below the calculated value of the underlying index value at about the time the One Week Option Series is opened for trading on the Exchange. No One Week Option Series on an index option class may expire in the same week during which any A.M. settled monthly option series on the same index class expire.

The Exchange may continue to list One Week Option Series until the One Week Option Series Pilot Program expires on July 12, 2007.

Quarterly Options Series Pilot Program. Notwithstanding the restriction in this Rule 5.19(a)(3) above, for a pilot period, the Exchange may list and trade options series that expire at the close of business on the last business day of a calendar quarter (''Quarterly Options Series''). The Exchange may list Quarterly Options Series for up to five (5) currently listed options classes that are either index options or options on exchange traded funds. In addition, the Exchange may also list Quarterly Options Series on any options classes that are selected by other securities exchanges that employ a similar pilot program under their respective rules. The pilot will commence the day the Exchange first initiates trading in a Quarterly Options Series or July 24, 2006, whichever is earlier. The Pilot Program will expire on July 10, 2007.

The Exchange will list series that expire at the end of the next consecutive four (4) calendar quarters, as well as the fourth quarter of the next calendar year. For example, if the Exchange is trading Quarterly Options Series in the month of May 2006, it will list series that expire at the end of the second, third and fourth quarters of 2006, as well as the first and fourth quarters of 2007. Following the second quarter 2006 expiration, the Exchange will add series that expire at the end of the second quarter of 2007.

The Exchange will not list a One Week Option Series on an options class whose expiration coincides with that of a Quarterly Options Series on that same options class.

Quarterly Options Series shall be P.M. settled.

The strike price of each Quarterly Options Series will be fixed at a price per share, with at least two strike prices above and two strike prices below the value of the underlying security at about the time that a Quarterly Options Series is opened for trading on the Exchange. The Exchange shall list strike prices for a Quarterly Options Series that are within $5 from the closing price of the underlying security on the preceding day. The Exchange may open for trading additional Quarterly Options Series of the same class if the current index value of the underlying index moves substantially from the exercise price of those Quarterly Options Series that already have been opened for trading on the Exchange. The exercise price of each Quarterly Options Series opened for trading on the Exchange shall be reasonably related to the current index value of the underlying index to which such series relates at or about the time such series of options is first opened for trading on the Exchange. The term ''reasonably related to the current index value of the underlying index'' means that the exercise price is within thirty percent (30%) of the current index value. The Exchange may also open for trading additional Quarterly Options Series that are more than thirty percent (30%) away from the current index value, provided that demonstrated customer interest exists for such series, as expressed by institutional, corporate, or individual customers or their brokers. Market Makers trading for their own account shall not be considered when determining customer interest under this provision.

The interval between strike prices on Quarterly Options Series shall be the same as the interval for strike prices for series in that same options class that expire in accordance with the normal monthly expiration cycle.

(4)–(7) No change.

(b)–(e) No change.

* * * * *

Rule 6. Options Trading

Rule 6.1. Applicability, Definitions and References

(a) No change.

(b) Definitions. The following terms as used in Rule 6 shall, unless the context

otherwise indicates, have the meanings herein specified:

(1)–(16) No change.

(17) Expiration Date. The term ''expiration date'' in respect of an option contract or Exchange-Traded Fund Share means 2:00 p.m. on the Saturday immediately following the third Friday of the expiration month. For a One Week Option Series the term ''expiration date'' shall mean the close of business on the next Friday that is a business day. If a Friday is not a business day, the ''expiration date'' shall be the close of business on the first business day immediately prior to that Friday. *For a Quarterly Options Series, the term ''expiration date'' shall mean the close of business on the last business day of a calendar quarter.*

(18)–(41) No change.

(42) Quarterly Options Series. The term ''Quarterly Options Series'' means a series in an options class that is approved for listing and trading on the Exchange in which the series is opened for trading on any business day and that expires at the close of business on the last business day of a calendar quarter.

(c)–(e) No change.

* * * * *

Rule 6.4. Series of Options Open for Trading

(a) After a particular class of options (call option contracts or put option contracts relating to a specific underlying stock, Exchange-Traded Fund Share or calculated index) has been approved for listing and trading on the Exchange, the Exchange shall from time to time open for trading series of options therein. Prior to the opening of trading in any series of options, the Exchange shall fix the expiration month and exercise price of option contracts included in each such series. For One Week Option Series, the Exchange will fix a specific expiration date and exercise price, as provided in Commentary .07 below. *For Quarterly Options Series, the Exchange will fix a specific expiration date and exercise price, as provided in Commentary .08 below.* Except for One Week Option Series *and Quarterly Options Series,* at the commencement of trading on the Exchange of a particular class of options, series of options therein having four different expiration months will normally be opened. Additional series of options of the same class may be opened for trading on the Exchange at or about the time a prior series expires. The exercise price of each series of options opened for trading on the Exchange shall be fixed at a price per share which is reasonably close to the price per share at which the underlying stock or Exchange-Traded Fund Share is traded in the primary market at or about the time such series of options is first opened for trading on the Exchange. Additional series of options of the same class may be opened for trading on the Exchange as the market price of the underlying stock or Exchange-Traded Fund Share moves substantially from the initial exercise price or prices. The opening of a new series of options on the Exchange shall not affect any other series of options of the same class previously opened. Commentary .07 will govern the procedures for opening One Week Option Series. *Commentary .08 will govern the procedures for opening Quarterly Options Series.*

(b)–(e) No change.

Commentary

.01 through .07 No change.

.08 Quarterly Options Series Pilot Program. For a pilot period, the Exchange may list and trade options series that expire at the close of business on the last business day of a calendar quarter (''Quarterly Options Series''). The Exchange may list Quarterly Options Series for up to five (5) currently listed options classes that are either index options or options on exchange traded funds. In addition, the Exchange may also list Quarterly Options Series on any options classes that are selected by other securities exchanges that employ a similar pilot program under their respective rules. The pilot will commence the day the Exchange first initiates trading in a Quarterly Options Series or July 24, 2006, whichever is earlier. The Pilot Program will expire on July 10, 2007.

The Exchange will list series that expire at the end of the next consecutive four (4) calendar quarters, as well as the fourth quarter of the next calendar year. For example, if the Exchange is trading Quarterly Options Series in the month of May 2006, it will list series that expire at the end of the second, third and fourth quarters of 2006, as well as the first and fourth quarters of 2007. Following the second quarter 2006 expiration, the Exchange will add series that expire at the end of the second quarter of 2007.

The Exchange will not list a One Week Option Series on an options class whose expiration coincides with that of a Quarterly Options Series on that same options class.

The strike price of each Quarterly Options Series will be fixed at a price per share, with at least two strike prices above and two strike prices below the value of the underlying security at about the time that a Quarterly Options Series is opened for trading on the Exchange. The Exchange shall list strike prices for a Quarterly Options Series that are within $5 from the closing price of the underlying security on the preceding day. Additional Quarterly Options Series of the same class may be opened for trading on the Exchange when the Exchange deems it necessary to maintain an orderly market, to meet customer demand or when the market price of the underlying security moves substantially from the initial exercise price or prices. To the extent that any additional strike prices are listed by the Exchange, such additional strike prices shall be within $5 from the closing price of the underlying on the preceding day. The opening of new Quarterly Options Series shall not affect the series of options of the same class previously opened.

The interval between strike prices on Quarterly Options Series shall be the same as the interval for strike prices for series in that same options class that expire in accordance with the normal monthly expiration cycle.

* * * * *

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the Exchange included statements concerning the purpose of, and basis for, the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. The Exchange has prepared summaries, set forth in sections A, B, and C below, of the most significant aspects of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

1. Purpose

The Exchange proposes to amend its rules to accommodate the listing of options series that would expire at the close of business on the last business day of a calendar quarter (''Quarterly Options Series''). Quarterly Options Series could be opened on any approved options class [7] on a business day (''Quarterly Options Opening Date'') and would expire at the close of business on the last business day of a calendar quarter (''Quarterly Options Expiration Date''). The Exchange would list series

[7] Quarterly Options Series may be opened in options on indexes or options on Exchange Traded Fund (''ETFs'') that satisfy the applicable listing criteria under NYSE Arca rules.

that expire at the end of the next four consecutive calendar quarters, as well as the fourth quarter of the next calendar year. For example, if the Exchange were trading Quarterly Options Series in the month of May 2006, it would list series that expire at the end of the second, third, and fourth quarters of 2006, as well as the first and fourth quarters of 2007. Following the second quarter 2006 expiration, the Exchange would add series that expire at the end of the second quarter of 2007.

Quarterly Options Series listed on currently approved options classes would be P.M.-settled and, in all other respects, would settle in the same manner as do the monthly expiration series in the same options class.

The proposed rule change would allow the Exchange to open Quarterly Options Series on up to five currently listed options classes that are either index options or options on ETFs. The strike price for each series would be fixed at a price per share, with at least two strike prices above and two strike prices below the approximate value of the underlying security at about the time that a Quarterly Options Series is opened for trading on the Exchange. The Exchange may list strike prices for a Quarterly Options Series that are within $5 from the closing price of the underlying security on the preceding trading day. The proposal would permit the Exchange to open for trading additional Quarterly Options Series of the same class when the Exchange deems it necessary to maintain an orderly market, to meet customer demand, or when the current market price of the underlying security moves substantially from the exercise prices of those Quarterly Options Series that already have been opened for trading on the Exchange. In addition, the exercise price of each Quarterly Options Series on an underlying index would be required to be reasonably related to the current index value of the index at or about the time such series of options were first opened for trading on the Exchange. The term ''reasonably related to the current index value of the underlying index'' means that the exercise price is within thirty percent of the current index value. The Exchange would also be permitted to open for trading additional Quarterly Options Series on an underlying index that are more than thirty percent away from the current index value, provided that demonstrated customer interest exists for such series, as expressed by institutional, corporate, or individual customers or their brokers. Market-Makers trading for their own account shall not be considered when determining customer interest under this provision.

Because monthly options series expire on the third Friday of their expiration month, a Quarterly Options Series, which would expire on the last business day of the quarter, could never expire in the same week in which a monthly options series in the same class expires. The same, however, is not the case for One Week Option Series. Quarterly Options Series and One Week Option Series on the same options class could potentially expire concurrently under the proposal.[8] Therefore, to avoid any confusion in the marketplace, the proposal stipulates that the Exchange may not list a One Week Option Series that expires at the end of the day on the same day as a Quarterly Options Series in the same class expires. In other words, the proposed rules would not permit the Exchange to list a P.M.-settled One Week Option Series on an ETF or an index that would expire on a Friday that is the last business day of a calendar quarter if a Quarterly Options Series on that ETF or index were scheduled to expire on that day.

However, the proposed rules would permit the Exchange to list an A.M.-settled One Week Option Series and a P.M.-settled Quarterly Options Series in the same options class that both expire on the same day (*i.e.,* on a Friday that is the last business day of the calendar quarter). The Exchange believes that the concurrent listing of an A.M.-settled One Week Option Series and a P.M.-settled Quarterly Options Series on the same underlying ETF or index that expire on the same day would not tend to cause the same confusion as would P.M.-settled short term and quarterly series in the same options class, and would provide investors with an additional hedging mechanism.

Finally, the interval between strike prices on Quarterly Options Series would be the same as the interval for strike prices for series in the same options class that expires in accordance with the normal monthly expiration cycles.

The Exchange believes that Quarterly Options Series would provide investors with a flexible and valuable tool to manage risk exposure, minimize capital outlays, and be more responsive to the timing of events affecting the securities that underlie option contracts. At the same time, the Exchange is cognizant of the need to be cautious in introducing a product that can increase the number of outstanding strike prices. For that reason, the Exchange intends to employ a limited pilot program (''Pilot Program'') for Quarterly Options Series. Under the terms of the Pilot Program, the Exchange could select up to five option classes on which Quarterly Options Series may be opened on any Quarterly Options Opening Date. The Exchange would also be allowed to list those Quarterly Options Series on any options class that is selected by another securities exchange with a similar pilot program under its rules. The Exchange believes that limiting the number of options classes in which Quarterly Options Series may be opened would help to ensure that the addition of the new series through this Pilot Program will have only a negligible impact on the Exchange's and the Option Price Reporting Authority's (''OPRA'') quoting capacity. Also, limiting the term of the Pilot Program to a period of approximately one year will allow the Exchange and the Commission to determine whether the program should be extended, expanded, and/or made permanent.

If the Exchange were to propose an extension or an expansion of the program, or were the Exchange to propose to make the Pilot Program permanent, the Exchange would submit, along with any filing proposing such amendments to the Pilot Program, a Pilot Program report (''Report'') that will provide an analysis of the Pilot Program covering the entire period during which the Pilot Program was in effect. The Report would include, at a minimum: (1) Data and written analysis on the open interest and trading volume in the classes for which Quarterly Option Series were opened; (2) an assessment of the appropriateness of the options classes selected for the Pilot Program; (3) an assessment of the impact of the Pilot Program on the capacity of NYSE Arca, OPRA, and on market data vendors (to the extent data from market data vendors is available); (4) any capacity problems or other problems that arose during the operation of the Pilot Program and how NYSE Arca addressed such problems; (5) any complaints that NYSE Arca received during the operation of the Pilot Program and how NYSE Arca addressed them; and (6) any additional information that would assist in assessing the operation of the Pilot Program. The Report must be submitted to the Commission at least sixty days prior to the expiration date of the Pilot Program.

Alternatively, at the end of the Pilot Program, if the Exchange determines not to propose an extension or an expansion of the Pilot Program, or if the Commission determines not to extend or

[8] The Exchange currently does not have any One Week Option Series listed for trading.

expand the Pilot Program, the Exchange would no longer list any additional Quarterly Options Series and would limit all existing open interest in Quarterly Options Series to closing transactions only.

Finally, the Exchange represents that it has the necessary systems capacity to support new options series that will result from the introduction of Quarterly Options Series.

2. Statutory Basis

The Exchange believes that the introduction of Quarterly Options Series will attract order flow to the Exchange, increase the variety of listed options available to investors, and provide investors with a valuable hedging tool. For these reasons, the Exchange believes that the proposed rule change is consistent with Section 6(b) of the Act [9] in general and furthers the objectives of Section 6(b)(5) of the Act [10] in particular in that it is designed to facilitate transaction in securities, to promote just and equitable principles of trade, to enhance competition, and, in general, to protect investors and the public interest.

B. Self-Regulatory Organization's Statement on Burden on Competition

The Exchange does not believe that the proposed rule change will impose any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants or Others

No written comments were solicited or received with respect to the proposed rule change.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

The Exchange has filed the proposed rule change pursuant to Section 19(b)(3)(A) of the Act [11] and subparagraph (f)(6) of Rule 19b–4 thereunder.[12] Because the foregoing proposed rule change (i) does not significantly affect the protection of investors or the public interest; (ii) does not impose any significant burden on competition; and (iii) does not become operative for 30 days from the date on which it was filed, or such shorter time as the Commission may designate, if consistent with the protection of investors and the public interest, the proposed rule change has become effective pursuant to Section 19(b)(3)(A) of the Act and Rule 19b–4(f)(6)(iii) thereunder.[13]

A proposed rule change filed under Rule 19b–4(f)(6) normally does not become operative for 30 days after the date of filing. However, Rule 19b–4(f)(6)(iii) permits the Commission to waive the operative delay if such action is consistent with the protection of investors and the public interest. The Exchange has asked the Commission to waive the operative delay to permit the Pilot Program extension to become effective prior to the 30th day after filing.

The Commission believes that waiving the 30-day operative delay is consistent with the protection of investors and the public interest. The Commission notes that the proposal is substantially identical to the ISE's Quarterly Option Series Pilot Program, previously published for comment and approved by the Commission,[14] and thus the Exchange's proposal raises no new issues of regulatory concern. Moreover, waiving the operative delay will allow the Exchange to immediately compete with other exchanges that list and trade quarterly options under similar programs, and consequently will benefit the public. Therefore, the Commission has determined to waive the 30-day delay and allow the proposed rule change to become operative immediately.[15]

At any time within 60 days of the filing of the proposed rule change, the Commission may summarily abrogate such rule change if it appears to the Commission that such action is necessary or appropriate in the public interest, for the protection of investors, or otherwise in furtherance of the purposes of the Act.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the proposed rule change, as amended, is consistent with the Act. Comments may be submitted by any of the following methods:

Electronic Comments

- Use the Commission's Internet comment form (*http://www.sec.gov/rules/sro.shtml*); or
- Send an e-mail to *rule-comments@sec.gov*. Please include File No. SR–NYSEArca–2006–45 on the subject line.

Paper Comments

- Send paper comments in triplicate to Nancy M. Morris, Secretary, Securities and Exchange Commission, 100 F Street, NE., Washington, DC 20549–1090.

All submissions should refer to File Number SR–NYSEArca–2006–45. This file number should be included on the subject line if e-mail is used. To help the Commission process and review your comments more efficiently, please use only one method. The Commission will post all comments on the Commissions Internet Web site (*http://www.sec.gov/rules/sro.shtml*). Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying in the Commission's Public Reference Room. Copies of such filing also will be available for inspection and copying at the principal office of the Exchange. All comments received will be posted without change; the Commission does not edit personal identifying information from submissions. You should submit only information that you wish to make available publicly. All submissions should refer to File Number SR–NYSEArca–2006–45 and should be submitted on or before August 15, 2006.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[16]

Nancy M. Morris,

Secretary.

[FR Doc. E6–11797 Filed 7–24–06; 8:45 am]

BILLING CODE 8010–01–P

[9] 15 U.S.C. 78f(b).

[10] 15 U.S.C. 78f(b)(5).

[11] 15 U.S.C. 78s(b)(3)(A).

[12] 17 CFR 240.19b–4(f)(6).

[13] Rule 19b–4(f)(6)(iii) requires the Exchange to give written notice to the Commission of its intent to file the proposed rule change five business days prior to filing. The Commission has determined to waive the five-day pre-filing requirement for this proposal.

[14] *See supra* note 6.

[15] For purposes only of waiving the operative delay of this proposal, the Commission notes that it has considered the proposed rule's impact on efficiency, competition, and capital formation. 15 U.S.C. 78c(f).

[16] 17 CFR 200.30–3(a)(12).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–54174; File No. SR–Phlx–2006–40]

Self-Regulatory Organizations; Philadelphia Stock Exchange, Inc.; Notice of Filing and Immediate Effectiveness of a Proposed Rule Change and Amendment No. 1 Thereto Relating to Its Short Stock Interest, Dividend, and Merger Strategy Programs

July 19, 2006.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (''Act''),[1] and Rule 19b–4 thereunder,[2] notice is hereby given that on June 28, 2006, the Philadelphia Stock Exchange, Inc. (''Phlx'' or ''Exchange'') filed with the Securities and Exchange Commission (''Commission'') the proposed rule change as described in Items I, II and III below, which items have been substantially prepared by Phlx. Phlx has designated the proposed rule change as one establishing or changing a due, fee, or other charge, pursuant to Section 19(b)(3)(A)(ii) of the Act[3] and Rule 19b–4(f)(2) thereunder,[4] which renders the proposal effective upon filing with the Commission. On July 18, 2006, the Exchange filed Amendment No. 1 to the proposed rule change.[5] The Commission is publishing this notice to solicit comments on the proposed rule change, as amended, from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

Phlx proposes to amend its schedule of fees to provide for a rebate of $0.08 per contract side for Registered Options Trader (''ROT'') executions and $0.07 per contract side for specialist executions made pursuant to a short stock interest strategy. In addition, the Exchange proposes to impose a fee cap of $1,000 on equity option transaction and comparison charges for short stock interest strategies executed on the same trading day in the same options class and to assess a $0.05 per contract side license fee for short stock interest strategies in connection with certain products that carry license fees. The Exchange is also proposing to amend its current definitions of dividend spread transactions and merger spread transactions and to add the new definitions for dividend, merger, and short stock interest strategies to its fee schedule.

The text of the proposed rule change is available on Phlx's Web site at *http://www.phlx.com,* at the Office of the Secretary at Phlx, and at the Commission's Public Reference Room.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the Exchange included statements concerning the purpose of, and basis for, the proposed rule change, as amended, and discussed any comments it received on the proposal. The text of these statements may be examined at the places specified in Item IV below. The Exchange has prepared summaries, set forth in Sections A, B, and C below, of the most significant aspects of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

1. Purpose

a. *Background.* Currently, the Exchange provides a rebate for certain contracts executed in connection with transactions occurring as part of a dividend or merger strategy. Specifically, for those options contracts executed pursuant to a dividend or merger strategy, the Exchange rebates $0.08 per contract side for ROT executions and $0.07 per contract side for specialist executions on the business day before the underlying stock's ex-date. The ex-date is the date on or after which a security is traded without a previously declared dividend or distribution.

The net transaction and comparison charges after the rebate is applied are capped at $1,750 for merger strategies executed on the same trading day in the same options class and for dividend strategies on the same day in the same options class, except for a security with a declared dividend or distribution less than $0.25. In that instance, the net transaction and comparison charges after the rebate is applied are capped at $1,000 for dividend strategies on the same day in the same options class.[6]

A $0.05 per contract side license fee is imposed for dividend strategies in connection with certain products that carry license fees.[7] The license fee is assessed on every transaction and is not subject to the $1,750 or $1,000 fee cap, nor does it count towards reaching the fee caps. The $1,000 and $1,750 fee caps and the $0.05 per contract side license fee are subject to a pilot program scheduled to expire on September 1, 2006.[8]

b. *Proposal.* Phlx proposes to amend its schedule of fees to provide for a rebate of $0.08 per contract side for ROT executions and $0.07 per contract side for specialist executions made pursuant to a short stock interest strategy. The Exchange proposes to define a short stock interest strategy as ''transactions done to achieve a short stock interest arbitrage involving the purchase, sale and exercise of in-the-money options of the same class.''

In addition, the Exchange proposes to impose a fee cap of $1,000 on equity option transaction and comparison charges for short stock interest strategies executed on the same trading day in the same options class. Similar to the fee caps currently in effect in connection with dividend and merger spread transactions,[9] the fee cap will be implemented after any applicable rebates are applied to ROT and specialist equity option transaction and comparison charges.

In addition, the Exchange is proposing to assess a $0.05 per contract side license fee for short stock interest strategies in connection with certain products that carry license fees.[10] The applicable license fee will be assessed on every transaction and will not be subject to the $1,000 fee cap, nor will it count towards reaching the $1,000 fee cap.

The short stock interest strategy rebate, $1,000 fee cap and $0.05 per contract side license fee would be effective beginning with trades settling on or after July 1, 2006. The short stock interest strategy $1,000 fee cap and $0.05 per contract side license fee

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[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] 15 U.S.C. 78s(b)(3)(A)(ii).

[4] 17 CFR 240.19b–4(f)(2).

[5] In Amendment No. 1, Phlx incorporated the proposed definitions of the terms ''short stock interest strategy,'' ''dividend strategy,'' and ''merger strategy'' into its fee schedule and provided citations for the former definitions of ''dividend spread'' and''merger spread'' in the purpose section of the proposal.

[6] These fee caps are implemented after any applicable rebates are applied to ROT and specialist equity option transaction and comparison charges. *See* Securities Exchange Act Release No. 53529 (March 21, 2006), 71 FR 15508 (March 28, 2006) (SR–Phlx–2006–16).

[7] For a complete list of these product symbols, see the Exchange's $60,000 Firm-Related Equity Option and Index Option Cap Fee Schedule.

[8] These fee caps are implemented after any applicable rebates are applied to ROT and specialist equity option transaction and comparison charges. *See* Securities Exchange Act Release No. 53529 (March 21, 2006), 71 FR 15508 (March 28, 2006) (SR–Phlx–2006–16).

[9] *See Id.*

[10] For a complete list of these product symbols, see the Exchange's $60,000 Firm-Related Equity Option and Index Option Cap Fee Schedule.

would remain in effect as a pilot program that is scheduled to expire on September 1, 2006.[11] Consistent with the current rebate program for dividend and merger strategies,[12] any rebate request forms for short stock interest strategies would have to be submitted to the Exchange three business days following the end of the previous month.

The Exchange is also proposing to amend its current definitions of dividend spread transactions and merger spread transactions (hereinafter referred to as ''dividend strategy,'' ''merger strategy,'' or ''dividend and merger strategies,'' as applicable) and update its fee schedule accordingly.

First, the Exchange proposes to amend the definitions of dividend and merger strategies in order to clarify that transactions done to achieve a dividend or merger arbitrage do not necessarily need to be ''spreads'' in order to qualify for the fee cap and rebate program currently in effect. It is the Exchange's understanding that each of these strategies can be achieved either by purchasing and selling the same option series or different options series. Accordingly, as explained in further detail below, the Exchange proposes to revise each definition to refer to each strategy as a ''strategy'' instead of as a ''spread'' and to change each definition in certain respects to make clear that transactions done to achieve a dividend or merger arbitrage that involve only one options series may also qualify for the above-referenced fee cap and rebate.

Second, the Exchange is proposing changes to the definition of each strategy to better reflect the similarities between the strategies. Dividend and merger strategies are strategies that have similar economic risks and are executed in similar ways. Each definition would be clarified to reflect that each strategy involves the ''purchase, sale and exercise'' of options. Each definition would also be clarified to reflect that the options involved must be of the ''same class.''

The Exchange currently defines a dividend strategy for purposes of the rebate and fee cap as ''any trade done within a defined time frame pursuant to a strategy in which a dividend arbitrage can be achieved between any two deep-in-the-money options.'' [13] The Exchange proposes to change ''dividend spread'' to ''dividend strategy,'' and proposes to define a dividend strategy as ''transactions done to achieve a dividend arbitrage involving the purchase, sale and exercise of in-the-money options of the same class, executed prior to the date on which the underlying stock goes ex-dividend.'' The word ''two'' is not included in the new definition so that transactions involving only a single options series that are done to achieve a dividend arbitrage may also qualify for the fee cap and rebate. The word ''deep'' is also not included in the new definition because the options used do not necessarily need to be deep-in-the-money options and also because of the difficulty in defining what constitutes ''deep'' in-the-money. The definition is clarified by making explicit two requirements: the options must be of the same class and the transactions must be effected on the day prior to the date on which the underlying stock goes ex-dividend.

The Exchange currently defines a merger strategy for purposes of the fee cap and rebate as a ''transaction executed pursuant to a merger spread strategy involving the simultaneous purchase and sale of options of the same class and expiration date, but with different strike prices, followed by the exercise of the resulting long options position, each executed prior to the date on which shareholders of record are required to elect their respective form of consideration, *i.e.*, cash or stock.'' [14] The Exchange proposes to change ''merger spread'' to ''merger strategy,'' and proposes to define a merger strategy as ''transactions done to achieve a merger arbitrage involving the purchase, sale and exercise of options of the same class and expiration date, executed prior to the date on which shareholders of record are required to elect their respective form of consideration, *i.e.*, cash or stock.'' The proposed definition does not include the words ''but with different strike prices'' so that transactions involving only a single options series that are done to achieve a merger arbitrage may also qualify for the fee cap and rebate. The word ''simultaneous'' is also not included in the new definition because the purchase and sale transactions do not necessarily need to be executed simultaneously.

The Exchange represents that the purpose of the proposed rule change is to attract additional order flow to the Exchange. The Exchange believes that implementing a rebate and fee cap for short stock interest spread strategies, similar to the rebates and fee caps currently in place for dividend and merger strategy strategies, should increase the Exchange's ability to compete with other options exchanges for order flow in connection with this options strategy.[15]

The Exchange also represents that the purpose of amending the definitions of dividend strategies and merger strategies is to add clarity and to make the definitions more consistent with each other and with the proposed definition of short stock interest strategies, which should in turn, reflect the similarities among the strategies.

2. Statutory Basis

The Exchange believes that the proposed rule change, as amended, is consistent with Section 6(b) of the Act,[16] in general, and Section 6(b)(4),[17] in particular, in that it is an equitable allocation of reasonable fees and other charges among its members.

B. Self-Regulatory Organization's Statement on Burden on Competition

The Exchange does not believe that proposed rule change, as amended, will impose any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants, or Others

No written comments were either solicited or received.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

The foregoing rule change, as amended, has become effective pursuant to Section 19(b)(3)(A)(ii) of the Act [18] and subparagraph (f)(2) of Rule 19b–4 thereunder [19] because it establishes or changes a due, fee, or other charge. At any time within 60 days of the filing of the proposed rule change, the

[11] The proposed pilot program will be in effect for the same time period as the $1,000 and $1,750 fee caps and the $0.05 per contract side license fee that is scheduled to expire on September 1, 2006. *See* Securities Exchange Act Release No. 53529 (March 21, 2006), 71 FR 15508 (March 28, 2006) (SR–Phlx–2006–16).

[12] *See* Securities Exchange Act Release No. 53094 (January 10, 2006), 71 FR 2975 (January 18, 2006) (SR–Phlx–2005–75).

[13] *See* Securities Exchange Act Release Nos. 53094 (January 10, 2006), 71 FR 2975 (January 18, 2006) (SR–Phlx–2005–75) and 51596 (April 21, 2005), 70 FR 22381 (April 29, 2005) (SR–Phlx–2005–19).

[14] *Id.*

[15] Other options exchanges currently allow for reduced and/or capped fees for short interest spread transactions. *See* Securities Exchange Act Release Nos. 53172 (January 24, 2006), 71 FR 5093 (January 31, 2006) (SR–CBOE–2006–07); 53412 (March 3, 2006), 71 FR 12752 (March 13, 2006) (SR–CBOE–2006–20); 53413 (March 3, 2006), 71 FR 13202 (March 14, 2006) (SR–PCX–2006–06); and 53415 (March 3, 2006), 71 FR 12745 (March 13, 2006) (SR–Amex–2006–10).

[16] 15 U.S.C. 78f(b).

[17] 15 U.S.C. 78f(b)(4).

[18] 15 U.S.C. 78s(b)(3)(A)(ii).

[19] 17 CFR 240.19b–4(f)(2).

Commission may summarily abrogate such rule change if it appears to the Commission that such action is necessary or appropriate in the public interest, for the protection of investors, or otherwise in furtherance of the purposes of the Act.[20]

IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the proposed rule change, as amended, is consistent with the Act. Comments may be submitted by any of the following methods:

Electronic Comments

- Use the Commission's Internet comment form (*http://www.sec.gov/rules/sro.shtml*); or
- Send an e-mail to *rule-comments@sec.gov*. Please include File Number SR–Phlx–2006–40 on the subject line.

Paper Comments

- Send paper comments in triplicate to Nancy M. Morris, Secretary, Securities and Exchange Commission, 100 F Street, NE., Washington, DC 20549–1090.

All submissions should refer to File Number SR–Phlx–2006–40. This file number should be included on the subject line if e-mail is used. To help the Commission process and review your comments more efficiently, please use only one method. The Commission will post all comments on the Commission's Internet Web site (*http://www.sec.gov/rules/sro.shtml*). Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying in the Commission's Public Reference Room. Copies of such filing also will be available for inspection and copying at the principal office of Phlx. All comments received will be posted without change; the Commission does not edit personal identifying information from submissions. You should submit only information that you wish to make available publicly. All submissions should refer to File Number SR–Phlx–2006–40 and should be submitted on or before August 15, 2006.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[21]

J. Lynn Taylor,

Assistant Secretary.

[FR Doc. E6–11792 Filed 7–24–06; 8:45 am]

BILLING CODE 8010–01–P

[20] The effective date of the original proposed rule change is June 28, 2006, the date of the original filing, and the effective date of Amendment No. 1 is July 18, 2006, the filing date of the amendment. For purposes of calculating the 60-day abrogation period within which the Commission may summarily abrogate the proposed rule change, as amended, under Section 19(b)(3)(C) of the Act, the Commission considers the period to commence on July 18, 2006, the date on which the Exchange submitted Amendment No. 1. *See* 15 U.S.C. 78s(b)(3)(C).

[21] 17 CFR 200.30–3(a)(12).

SMALL BUSINESS ADMINISTRATION

[Disaster Declaration # 10519 and # 10520]

New York Disaster Number NY–00022

AGENCY: Small Business Administration.

ACTION: Amendment 1.

SUMMARY: This is an amendment of the Presidential declaration of a major disaster for the State of New York (FEMA–1650–DR), dated 07/03/2006.

Incident: Severe Storms and Flooding.

Incident Period: 06/26/2006 and continuing through 07/10/2006.

Effective Date: 07/10/2006.

Physical Loan Application Deadline Date: 09/01/2006.

EIDL Loan Application Deadline Date: 04/03/2007.

ADDRESSES: Submit completed loan applications to: U.S. Small Business Administration, National Processing and Disbursement Center, 14925 Kingsport Road Fort Worth, TX 76155.

FOR FURTHER INFORMATION CONTACT: A. Escobar, Office of Disaster Assistance, U.S. Small Business Administration, 409 3rd Street, SW., Suite 6050, Washington, DC 20416.

SUPPLEMENTARY INFORMATION: The notice of the President's major disaster declaration for the State of New York, dated 07/03/2006, is hereby amended to establish the incident period for this disaster as beginning 06/26/2006 and continuing through 07/10/2006.

All other information in the original declaration remains unchanged.

(Catalog of Federal Domestic Assistance Numbers 59002 and 59008)

Cheri L. Cannon,

Acting Associate Administrator for Disaster Assistance.

[FR Doc. E6–11785 Filed 7–24–06; 8:45 am]

BILLING CODE 8025–01–P

SMALL BUSINESS ADMINISTRATION

[Disaster Declaration # 10515 and # 10516]

Pennsylvania Disaster Number PA–00004

AGENCY: Small Business Administration.

ACTION: Amendment 4.

SUMMARY: This is an amendment of the Presidential declaration of a major disaster for the Commonwealth of Pennsylvania (FEMA–1649–DR), dated 07/04/2006.

Incident: Severe Storms, Flooding, and Mudslides.

Incident Period: 06/23/2006 and continuing through 07/10/2006.

Effective Date: 07/10/2006.

Physical Loan Application Deadline Date: 09/05/2006.

EIDL Loan Application Deadline Date: 04/04/2007.

ADDRESSES: Submit completed loan applications to: U.S. Small Business Administration, National Processing and Disbursement Center, 14925 Kingsport Road, Fort Worth, TX 76155.

FOR FURTHER INFORMATION CONTACT: A. Escobar, Office of Disaster Assistance, U.S. Small Business Administration, 409 3rd Street, SW., Suite 6050, Washington, DC 20416.

SUPPLEMENTARY INFORMATION: The notice of the President's major disaster declaration for the Commonwealth of Pennsylvania, dated 07/04/2006, is hereby amended to establish the incident period for this disaster as beginning 06/23/2006 and continuing through 07/10/2006.

All other information in the original declaration remains unchanged.

(Catalog of Federal Domestic Assistance Numbers 59002 and 59008)

Cheri L. Cannon,

Acting Associate Administrator for Disaster Assistance.

[FR Doc. E6–11783 Filed 7–24–06; 8:45 am]

BILLING CODE 8025–01–P

SMALL BUSINESS ADMINISTRATION

[Disaster Declaration # 10515 and # 10516]

Pennsylvania Disaster Number PA–00004

AGENCY: Small Business Administration.

ACTION: Amendment 5.

SUMMARY: This is an amendment of the Presidential declaration of a major disaster for the Commonwealth of Pennsylvania (FEMA–1649–DR), dated 07/04/2006.

Incident: Severe Storms, Flooding, and Mudslides.

Incident Period: 06/23/2006 through 07/10/2006.

Effective Date: 07/14/2006.

Physical Loan Application Deadline Date: 09/05/2006.

EIDL Loan Application Deadline Date: 04/04/2007.

ADDRESSES: Submit completed loan applications to: U.S. Small Business Administration, National Processing and Disbursement Center, 14925 Kingsport Road Fort Worth, TX 76155.

FOR FURTHER INFORMATION CONTACT: A. Escobar, Office of Disaster Assistance, U.S. Small Business Administration, 409 3rd Street, SW., Suite 6050, Washington, DC 20416.

SUPPLEMENTARY INFORMATION: The notice of the Presidential disaster declaration for the Commonwealth of Pennsylvania, dated 07/04/2006 is hereby amended to include the following areas as adversely affected by the disaster:

Primary Counties: Bradford, Carbon, Luzerne.

Contiguous Counties:

Pennsylvania: Tioga;

New York: Chemung.

All other information in the original declaration remains unchanged.

(Catalog of Federal Domestic Assistance Numbers 59002 and 59008)

Cheri L. Cannon,

Acting Associate Administrator for Disaster Assistance.

[FR Doc. E6–11786 Filed 7–24–06; 8:45 am]

BILLING CODE 8025–01–P

SOCIAL SECURITY ADMINISTRATION

Privacy Act of 1974, as Amended; Alteration to Existing System of Records

AGENCY: Social Security Administration (SSA).

ACTION: Altered system of records, including proposed new routine uses.

SUMMARY: In accordance with the Privacy Act (5 U.S.C. 552a(e)(4) and (e)(11)), we are issuing public notice of our intent to alter an existing system of records entitled *Medicare Part D and Part D Subsidy File, 60–0321.* The proposed alterations will result in the following changes to the system of records:

(1) Expansion of the categories of individuals covered by the system to include individuals entitled to Medicare Part A, Part B and Medicare Advantage Part C; and

(2) Proposed new routine uses 17–21 providing for the release of information for purposes of efficient administration of Medicare Part A, Part B, Medicare Advantage Part C, and Medicare Part D.

We are also changing the name of the existing *Medicare Part D and Part D Subsidy File* system of records. The proposed new name is the *Medicare Database,* hereinafter referred to as the *MDB File.* The change reflects the establishment of a single repository for all Medicare-related data.

The proposed alterations are discussed in the **SUPPLEMENTARY INFORMATION** section below. We invite public comments on this proposal.

DATES: We filed a report of the proposed alteration with the Chairman of the Senate Committee on Homeland Security and Governmental Affairs, the Chairman of the House Committee on Government Reform, and the Director, Office of Information and Regulatory Affairs, Office of Management and Budget (OMB) on July 18, 2006. The proposed alteration will become effective on August 26, 2006 unless we receive comments that will result in a contrary determination.

ADDRESSES: Interested individuals may comment on this publication by writing to the Executive Director, Office of Public Disclosure, Office of the General Counsel, Social Security Administration, Room 3–A–6 Operations Building, 6401 Security Boulevard, Baltimore, Maryland 21235–6401. All comments received will be available for public inspection at the above address.

FOR FURTHER INFORMATION CONTACT: Ms. Christine W. Johnson, Lead Social Insurance Specialist, Office of Public Disclosure, Office of the General Counsel, Social Security Administration, Room 3–C–1 Operations Building, 6401 Security Boulevard, Baltimore, Maryland 21235–6401, telephone at (410) 965–8563, e-mail: *mailto:chris.w.johnson@ssa.gov.*

SUPPLEMENTARY INFORMATION:

I. Background and Purpose of Proposed Alteration to the MDB File System of Records

A. General Background

On December 8, 2003, the Medicare Prescription Drug, Improvement, and Modernization Act (also known as the Medicare Modernization Act or MMA) of 2003, created a voluntary prescription drug coverage benefit program under new Part D of Medicare for all individuals eligible for Medicare Part A and/or Part B. The MMA also created a subsidy program to assist Medicare beneficiaries with limited means to pay for prescription drug coverage. The new Medicare Part D was implemented January 2006. We published a notice of system of records in the **Federal Register** to implement the Medicare Part D coverage on December 28, 2004. The notice can be found at 70 FR 77816, December 28, 2004. Additionally, Section 811 of the MMA established a premium subsidy reduction which will result in an income-related adjustment amount being added to the standard monthly Medicare Part B premium amount.

The Medicare Part B premium subsidy reduction becomes effective January 2007. Sections 101 and 201 of the MMA changed some of the terms and definitions for Medicare Part C (now Medicare Advantage) and provided for the implementation of the Medicare Advantage program.

Medicare Part B is a voluntary program which provides medical insurance coverage for medical and health services such as physician services, diagnostic services and medical supplies. Medicare Part B beneficiaries are responsible for deductibles, co-insurance and monthly premiums towards the cost of covered services. Generally, the Part B premium covers approximately 25 percent of the Part B program costs and the remaining 75 percent of the program costs are subsidized by the Federal Government by contributions to the Federal Supplementary Medical Insurance Trust Fund. Certain Part B beneficiaries may also pay an increased premium for late reenrollment or for enrollment after a period without coverage.

Beginning January 2007, the Medicare Part B premium subsidy will result in an income-related adjustment amount being added to the standard monthly Medicare Part B premium amount for an estimated 4 to 5 percent of the approximately 40 million Part B beneficiaries who have income above an income threshold set by the MMA. Beneficiaries with modified adjusted gross income above a statutory income threshold will pay more of the cost of their Part B premiums through an income-related monthly adjustment amount. The income-related monthly adjustment amount is an additional amount of premium for Part B coverage that is added to the Part B standard monthly premium. The purpose of the income-related adjustment is to reduce the Federal subsidy to Medicare Part B beneficiaries with income above the statutory threshold.

To implement the Medicare Part B premium subsidy reduction and establish eligibility for Part D subsidies, we must collect and maintain relevant information that will be used for these determinations. We will maintain the information in the *MDB File.* We currently maintain information about

Medicare Part A and Part C applicants and beneficiaries in other SSA systems of records (*e.g.*, the Master Beneficiary Record and the Claims Folders System). To assist us in the efficient administration of Medicare Part A, Part B, Medicare Advantage Part C, and Medicare Part D programs, we are consolidating all of the relevant records into the *MDB File.* In addition to these changes, we are also establishing new routine use disclosures of *MDB File* information. To implement these changes, we must make alterations to the *MDB File.* The alterations are discussed in Section I, Subsections B and C below.

B. Expansion of the Categories of Individuals Covered by the MDB File System of Records

(1.) Expansion of the Categories of Individuals in the MDB File

Currently, the records in the system pertain primarily to beneficiaries with limited means to pay for prescription drug coverage under Medicare Part D. The purpose of the proposed alteration is to expand the categories of individuals covered by this system to include beneficiaries who have medical insurance under Medicare Part A, Part B, Medicare Advantage Part C, and all beneficiaries who are covered or who will be eligible for facilitated enrollment under Part D plans. See the ''Categories of individuals covered by the system'' in the system notice below for the inclusion of the additional categories of individuals and a full description of the information maintained therein.

(2.) Name Change for the Existing Medicare Part D and Part D Subsidy File System of Records

We propose to change the name of the existing system to t he MDB File system of records to facilitate and reflect the formation of a single repository for the collection and maintenance of all Medicare-related data.

C. Proposed New Routine Use Disclosures of Data Maintained in the MDB File System of Records

1. Establishment of New Routine Uses

We are proposing to establish five new routine uses to allow disclosure of information maintained in the *MDB File.* The routine uses will facilitate disclosures to applicants, claimants, prospective applicants or claimants (other than the data subjects and their authorized representatives); the Centers for Medicare & Medicaid Services; the Railroad Retirement Board; the Office of Personnel Management; the Office of Medicare Hearings and Appeals; and the Medicare Appeals Council in the Department of Health and Human Services, in pursuit of Part B premium reduction based on participation in a Part C Medicare Advantage Plan; Medicare Part B and Part C premium collection; all Medicare enrollment, premium collection and reduction, and Part B premium income-related monthly adjustment amount determinations and appeals of determinations.

Accordingly, proposed new routine uses numbered 17–21 that we are adding to the MDF File provide for the disclosure of information as follows:

17. ''To applicants, claimants, prospective applicants or claimants (other than the data subjects and their authorized representatives) to the extent necessary for the purpose of pursuing Medicare Part B premium reduction based on participation in certain Part C Medicare Advantage plans;''

18. ''To applicants, claimants, prospective applicants or claimants (other than the data subjects and their authorized representatives) to the extent necessary for the purpose of administering Medicare Part A, Part B, Medicare Advantage Part C, and Medicare Part D, including but not limited to pursuing Medicare Part B, Part C and Part D premium collection;''

19. ''To the Centers for Medicare & Medicaid Services (CMS), for the purpose of administering Medicare Part A, Part B, Medicare Advantage Part C, and Medicare Part D, including but not limited to: Medicare Part C enrollment and premium collection processes; Part D enrollment and premium collection processes; Medicare Part B premium reduction based on participation in a Part C plan; and Medicare Part B enrollment and income-related monthly adjustment amount determinations, appeals of determinations, and premium collection;''

20. ''To CMS, the Railroad Retirement Board and the Office of Personnel Management for purposes of administering Part A, Part B, Medicare Advantage Part C, and Medicare Part D, including, but not limited to, collecting Medicare Part B premiums, which include an income-related monthly adjustment amount,'' and

21. ''To the Office of Medicare Hearings and Appeals and to the Medicare Appeals Council in the Department of Health and Human Services for purposes of appeals of determinations of Medicare Part B income-related monthly adjustment amount determinations made by SSA.''

2. Compatibility of Proposed New Routine Uses

The Privacy Act (5 U.S.C. 552a(b)(3)) and SSA's disclosure regulation (20 CFR Part 401) permit us to disclose information under a published routine use for a purpose that is compatible with the purpose for which we collected the information. The proposed routine uses above will ensure efficient administration of SSA programs administered through the *MDB File.* Therefore, the proposed routine uses are appropriate and meet the relevant statutory and regulatory criteria.

II. Records Storage Medium and Safeguards for the Proposed MDB File System of Records

The *MDB File* is a repository of Medicare applicant and beneficiary information. Only authorized SSA personnel who have a need for the information in the performance of their official duties will be permitted access to the information. We will safeguard the security of the information by requiring the use of access codes to enter the computer systems that will maintain the data and will store computerized records in secured areas that are accessible only to employees who require the information to perform their official duties. Any manually maintained records will be kept in locked cabinets or in otherwise secure areas. Furthermore, SSA employees having access to SSA databases maintaining personal information must sign a sanction document annually, acknowledging their accountability for making unauthorized access to, or disclosure of, such information.

Contractors generally do not have access to the *MDB File;* however, should this change in the future, contractor personnel having access to data in the *MDB File* will be required to adhere to SSA rules concerning safeguards, access and use of the data.

SSA personnel having access to the data on this system will be informed of the criminal penalties of the Privacy Act for unauthorized access to or disclosure of information maintained in this system. See 5 U.S.C. 552a(i)(1).

III. Effect of the Proposed MDB File System of Records on the Rights of Individuals

The proposed alteration to the *MDB File* system of records pertains to SSA's responsibilities in expanding the categories of individuals maintained in the file to include beneficiaries who are eligible for Medicare Part A, Part B and Medicare Advantage Part C. We will adhere to all applicable statutory

requirements, including those under the Social Security Act and the Privacy Act, in carrying out our responsibilities. Therefore, we do not anticipate that the proposed alterations will have any unwarranted adverse effect on the rights of individuals.

IV. Change in the Name of the Existing Medicare Part D and Part D Subsidy File System of Records

We will change the name of the existing system of records to the *Medicare Database (MDB) File* to reflect the establishment of a single repository for all Medicare-related information needed to efficiently administer the Medicare Part A, Part B, Medicare Advantage Part C and Medicare Part D programs.

Dated: July 18, 2006.

Jo Anne B. Barnhart,

Commissioner.

Social Security Administration (SSA)

Notice of System of Records Required by the Privacy Act of 1974; as Amended

60–0321

SYSTEM NAME:

Medicare Database (MDB) File, Social Security Administration, Deputy Commissioner for Disability and Income Security Programs.

SECURITY CLASSIFICATION:

None.

SYSTEM LOCATION:

Social Security Administration, National Computer Center, Office of Systems, 6401 Security Boulevard, Baltimore, Maryland 21235.

Other authorized Federal and State agencies that generally have access to information in SSA systems will also have access as needed to the *MDB File.* Contact the system manager for address information.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

Claimants, applicants, beneficiaries, ineligible spouses and potential claimants for Medicare Part A, Medicare Part B, Medicare Advantage Part C, Medicare Part D and for Medicare Part D prescription drug coverage subsidies.

CATEGORIES OF RECORDS IN THE SYSTEM:

This file contains the name, Social Security number (SSN) and income and resource data of the claimant or potential claimant for Part D subsidy; the subsidy application; supporting evidence and documentation for eligibility; documentation for income and resource verification; supporting evidence and documentation for appeal requests; premium payment documentation; correspondence to and from claimants and/or personal representatives; and leads information from third parties such as social service agencies and hospitals. Further, separate files may be maintained of certain actions which are entered directly into the MDB file. These relate to reports of changes of income and resources and other post-adjudicative reports. Separate data are also maintained for statistical purposes (*e.g.*, subsidy denial, and demographic and statistical information relating to subsidy decisions).

This file also contains information about Medicare Part A, Part B, Medicare Advantage Part C, and non-subsidy Medicare Part D beneficiaries. The information maintained in this system of records is collected from beneficiaries for Medicare Part A, Part B, Medicare Advantage Part C, Medicare Part D, and other source systems maintained by SSA. The information maintained for Part B also include: The individual's name and SSN; enrollment information; premium surcharge information; information from the Internal Revenue Service about such individual's modified adjusted gross income (MAGI) from his/her Federal tax return, including adjusted gross income (AGI), and other tax-exempt income, and tax filing status for each year that the MAGI exceeds a statutory income threshold. Also included is information about MAGI provided by a claimant or beneficiary; supporting evidence and documentation for new initial determinations and appeal requests; Medicare Part B income-related monthly adjustment amount determinations; reconsiderations and appeals of Medicare Part B income-related monthly adjustment amount determinations; information essential to the deduction of premiums from Title II monthly benefits from Railroad Retirement annuities, Civil Service retirement benefits and direct billing by the Centers for Medicare & Medicaid Services; and data necessary to providing fiscal accounting of premiums withheld.

The file may also contain data collected as a result of inquires or complaints, and evaluation and measurement studies of the effectiveness of Medicare Prescription Drug Improvement and Modernization Act (MMA) policies.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

Sections 202–205, 223, 226, 228, 1611, 1631, 1818, 1836, 1839, 1840 and 1860D–1–1860D–15 of the Social Security Act (42 U.S.C. 402–405, 423, 426, 428, 1382, 1383, 1395i–2, 1395o, 1395r–1, 1395s and 1395w–101–1395w–115).

PURPOSE(S):

The *MDB File* is used for the collection and maintenance of material related to Medicare Part A, Part B, Medicare Advantage Part C, and Medicare Part D, including, but not limited to: Part D participation and premium deductions, and where applicable, subsidized prescription drug coverage eligibility information; Medicare Part B enrollment, surcharge and premium reduction information for participants in certain Medicare Advantage plans and for maintaining information necessary to set income-related monthly adjustment amounts to Part B premiums for certain individuals who exceed an income threshold; and Part C premium deduction authorized by the MMA. The information in this file is used throughout SSA for the purposes of collecting, documenting, organizing and maintaining information and documents for making determinations about eligibility for subsidized benefits, premium reductions and deduction under the MMA.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

Disclosures may be made for routine uses as indicated below. However, any information defined as ''return or return information'' under 26 U.S.C. 6103 of the Internal Revenue Code (IRC) will not be disclosed unless authorized by the IRC, the Internal Revenue Service (IRS), or IRS regulations.

1. To the Office of the President for the purpose of responding to an individual pursuant to an inquiry received from that individual or from a third party on his or her behalf.

2. To a congressional office in response to an inquiry from that office made at the request of the subject of a record.

3. To the Department of Justice (DOJ), a court or other tribunal, or another party before such tribunal when:

(a) SSA, or any component thereof; or

(b) Any SSA employee in his/her official capacity; or

(c) Any SSA employee in his/her individual capacity where DOJ (or SSA where it is authorized to do so) has agreed to represent the employee; or

(d) The United States or any agency thereof where SSA determines that the litigation is likely to affect the operations of SSA or any of its components is party to litigation or has an interest in such litigation, and SSA determines that the use of such records

by DOJ, a court or other tribunal, or another party before such tribunal, is relevant and necessary to the litigation, provided, however, that in each case, SSA determines that such disclosure is compatible with the purpose for which the records were collected.

4. Information may be disclosed to DOJ for:

(a) Investigating and prosecuting violations of the Social Security Act to which criminal penalties attach;

(b) Representing the Commissioner; or

(c) Investigating issues of fraud by agency officers or employees, or violation of civil rights.

5. To applicants, claimants, prospective applicants or claimants (other than the data subjects and their authorized representatives) to the extent necessary for the purpose of pursuing Medicare Part D and Part D subsidy entitlement or appeal rights.

6. To Federal, State, or local agencies (or agents on their behalf) for administering cash or non-cash income maintenance or health maintenance programs (including programs under the Social Security Act). Such disclosures include, but are not limited to, release of information to:

(a) The Railroad Retirement Board for administering provisions of the Railroad Retirement and Social Security Acts relating to railroad employment and for administering the Railroad Unemployment Insurance Act;

(b) The Department of Veterans Affairs (VA) for administering 38 U.S.C. 412, and upon request, information needed to determine eligibility for, or amount of, VA benefits or verifying other information with respect thereto;

(c) The Department of Labor for administering provisions of Title IV of the Federal Coal Mine Health and Safety Act, as amended by the Black Lung Benefits Act;

(d) State agencies for making determinations of Medicaid eligibility; and

(e) State agencies for making determinations of food stamp eligibility under the food stamp program;

(f) State audit agencies for auditing Medicaid eligibility considerations; and

(g) State welfare departments pursuant to agreements with SSA for administration of State supplementation payments; for enrollment of welfare recipients for medical insurance under section 1843 of the Act; and for conducting independent quality assurance reviews of Supplemental Security Income recipient records, provided that the agreement for Federal administration of the supplementation provides for such an independent review.

7. To the Internal Revenue Service, Department of the Treasury, for the purpose of auditing SSA's compliance with the safeguard provisions of the Internal Revenue Code of 1986, as amended.

8. To the Centers for Medicare & Medicaid Services (CMS), for the purpose of administering Medicare Part D enrollment and premium collection and Medicare Advantage Part C premium collections, as well as Medicare Part B income-related monthly adjustment amounts.

9. To Federal and State agencies administering Medicare Part D and Part D subsidy under the MMA of 2003. For example, release of information to:

(a) The Bureau of Public Debt, Department of the Treasury;

(b) The Internal Revenue Service;

(c) The Office of Personnel Management;

(d) The Railroad Retirement Board;

(e) The Veterans Administration; and

(f) The Office of Child Support Enforcement for the purpose of assisting in the verification of eligibility for the prescription drug subsidy.

10. To a Federal, State, or congressional support agency (*e.g.*, the Congressional Budget Office and the Congressional Research Service in the Library of Congress) for research, evaluation, or statistical studies. Such disclosures include, but are not limited to, release of information in assessing the extent to which one can predict eligibility for Supplemental Security Income (SSI) payments or Social Security disability insurance benefits; examining the distribution of Social Security benefits by economic and demographic groups and how these differences might be affected by possible changes in policy; analyzing the interaction of economic and non-economic variables affecting entry and exit events and duration in the Title II Old Age, Survivors, and Disability Insurance and the Title XVI SSI disability programs; and analyzing retirement decisions focusing on the role of Social Security benefit amounts, automatic benefit recomputation, the delayed retirement credit, and the retirement test, if SSA:

(a) Determines that the routine use does not violate legal limitations under which the record was provided, collected, or obtained;

(b) Determines that the purpose for which the proposed use is to be made:

(i) Cannot reasonably be accomplished unless the record is provided in a form that identifies individuals;

(ii) Is of sufficient importance to warrant the effect on, or risk to, the privacy of the individual which such limited additional exposure of the record might bring;

(iii) Has reasonable probability that the objective of the use would be accomplished;

(iv) Is of importance to the Social Security program or the Social Security beneficiaries or is for an epidemiological research project that relates to the Social Security program or beneficiaries;

(c) Requires the recipient of information to:

(i) Establish appropriate administrative, technical, and physical safeguards to prevent unauthorized use or disclosure of the record and agree to on-site inspection, by SSA's personnel, its agents, or by independent agents of the recipient agency, of those safeguards;

(ii) Remove or destroy the information that enables the individual to be identified at the earliest time at which removal or destruction can be accomplished consistent with the purpose of the project, unless the recipient receives written authorization from SSA that it is justified, based on research objectives, for retaining such information;

(iii) Make no further use of the records except

(a) Under emergency circumstances affecting the health or safety of any individual following written authorization from SSA;

(b) For disclosure to an identified person approved by SSA for the purpose of auditing the research project;

(iv) Keep the data as a system of statistical records. A statistical record is one which is maintained only for statistical and research purposes and which is not used to make any determination about an individual;

(d) Secures a written statement by the recipient of the information attesting to the recipient's understanding of, and willingness to abide by, the provisions.

11. The Department of Homeland Security, Bureau of Citizenship and Immigration Services, upon request, to identify and locate aliens in the United States pursuant to section 290(b) of the Immigration and Nationality Act (8 U.S.C. 1360(b)).

12. To contractors and other Federal agencies, as necessary, for the purpose of assisting SSA in the efficient administration of its programs. We contemplate disclosing information under this routine use only in situations in which SSA may enter a contractual or similar agreement with a third party to assist in accomplishing an agency function relating to this system of records.

13. Addresses of beneficiaries who are obligated on loans held by the Secretary of Education or a loan made in accordance with 20 U.S.C. 1071, *et seq.* (the Robert T. Stafford Student Loan Program) may be disclosed to the Department of Education as authorized by section 489A of the Higher Education Act of 1965.

14. To student volunteers and other workers, who technically do not have the status of Federal employees, when they are performing work for SSA as authorized by law, and who need access to personally identifiable information in SSA records in order to perform their assigned Agency functions.

15. To Federal, State and local law enforcement agencies and private security contractors, as appropriate, information necessary:

- To enable them to protect the safety of SSA employees and customers, the security of the SSA workplace and the operation of SSA facilities; or
- To assist investigations or prosecutions with respect to activities that affect such safety and security or activities that disrupts the operation of SSA facilities.

16. To the General Services Administration (GSA) and the National Archives Records Administration (NARA) under 44 U.S.C. 2904 and 2906, as amended by the NARA Act of 1984, non-tax return information which is not restricted from disclosure by Federal law for the use of those agencies in conducting records management studies.

17. To applicants, claimants, prospective applicants or claimants (other than the data subjects and their authorized representatives) to the extent necessary for the purpose of pursuing Medicare Part B Premium Reduction based on participation in a Medicare Advantage Part C Plan.

18. To applicants, claimants, prospective applicants or claimants (other than the data subjects and their authorized representatives) to the extent necessary for the purpose of administering Medicare Part A, Part B, Medicare Advantage Part C, and Medicare Part D, including, but not limited to, pursuing Medicare Part B, Part C and Part D premium collection.

19. To the Centers for Medicare & Medicaid Services, for the purpose of administering Medicare Part A, Part B, Medicare Advantage Part C, and Medicare Part D, including but not limited to: Medicare Part C enrollment and premium collection processes; Part D enrollment and premium collection processes; Medicare Part B premium reduction based on participation in a Part C plan and Medicare Part B enrollment and income-related monthly adjustment amount determinations, appeals of determinations, and premium collection.

20. To the Centers for Medicare & Medicaid Services, the Railroad Retirement Board and the Office of Personnel Management for the purpose of administering Medicare Part A, Part B, Medicare Advantage Part C, and Medicare Part D, including, but not limited to, collecting Medicare Part B premiums, some of which include an income-related monthly adjustment amount.

21. To the Office of Medicare Hearings and Appeals and to the Medicare Appeals Council in the Department of Health and Human Services for purposes of appeals of determinations of Medicare Part B income-related monthly adjustment amount determinations made by SSA.

We will disclose information to the Office of Medicare Hearings and Appeals and to the Medicare Appeals Council under this routine use only for the purpose of assisting that office with appeals of Medicare Part B income-related monthly adjustment amount decisions.

DISCLOSURE TO CONSUMER REPORTING AGENCIES:

Disclosure pursuant to 5 U.S.C. 552a(b)(12) may be made to consumer reporting agencies as defined in the Fair Credit Reporting Act (15 U.S.C. 1681a(f)) or the Federal Claims Collection Act of 1966 (31 U.S.C. 3701, *et seq.*), as amended. The disclosure will be made in accordance with 31 U.S.C. 3711(e) when authorized by sections 204(f), 808(e), or 1631(b)(4) of the Social Security Act (42 U.S.C. 404(f), 1008(e), or 1383(b)(4)). The purpose of this disclosure is to aid in the collection of outstanding debts owed to the Federal government, typically, to provide an incentive for debtors to repay delinquent Federal government debts by making these debts part of their credit records. The information to be disclosed is limited to the individual's name, address, SSN, and other information necessary to establish the individual's identity, the amount, status, and history of the debt and the agency or program under which the debt arose.

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM:

STORAGE:

Records are maintained electronically. Any manually maintained records will be kept in locked cabinets or in otherwise secure areas.

RETRIEVABILITY:

Records are retrieved electronically by SSN and alphabetically by name.

SAFEGUARDS:

The MDB File is protected through limited access to SSA records. Access to the records is limited to those employees who require such access in the performance of their official duties. All employees are instructed about SSA confidentiality rules as a part of their initial orientation training.

Safeguards for automated records have been established in accordance with the Systems Security Handbook. For computerized records, electronically transmitted between SSA's central office and field office locations (including organizations administering SSA programs under contractual agreements), safeguards include a lock/unlock password system, exclusive use of leased telephone lines, a terminal oriented transaction matrix, and an audit trail.

RETENTION AND DISPOSAL:

Pursuant to 36 CFR 1228.26, SSA will submit to NARA, for approval, a schedule for the MDB, no later than one year from implementation of this new program. Until a schedule is developed and approved, records may not be destroyed.

SYSTEM MANAGER(S) AND ADDRESS:

Deputy Commissioner, Disability and Income Security Programs, Social Security Administration, 6401 Security Boulevard, Baltimore, MD 21235.

NOTIFICATION PROCEDURE:

An individual can determine if this system contains a record about him/her by writing to the system manager(s) at the above address and providing his/her name, SSN or other information that may be in the system of records that will identify him/her. An individual requesting notification of records in person should provide the same information, as well as provide an identity document, preferably with a photograph, such as a driver's license or some other means of identification. If an individual does not have any identification documents sufficient to establish his/her identity, the individual must certify in writing that he/she is the person claimed to be and that he/she understands that the knowing and willful request for, or acquisition of, a record pertaining to another individual under false pretenses is a criminal offense.

If notification is requested by telephone, an individual must verify his/her identity by providing identifying

information that parallels information in the record for which notification is being requested. If it is determined that the identifying information provided by telephone is insufficient, the individual will be required to submit a request in writing or in person. If an individual is requesting information by telephone on behalf of another individual, the subject individual must be connected with SSA and the requesting individual in the same phone call. SSA will establish the subject individual's identity (his/her name, SSN, address, date of birth and place of birth along with one other piece of information such as mother's maiden name) and ask for his/her consent to providing information to the requesting individual.

If a request for notification is submitted by mail, an individual must include a notarized statement to SSA to verify his/her identity or must certify in the request that he/she is the person claimed to be and that he/she understands that the knowing and willful request for, or acquisition of, a record pertaining to another individual under false pretenses is a criminal offense. These procedures are in accordance with SSA regulations (20 CFR 401.40(c)).

RECORD ACCESS PROCEDURES:

Same as Notification procedures. Requesters should also reasonably specify the information they are seeking. These procedures are in accordance with SSA regulations (20 CFR 401.40(c)).

CONTESTING RECORD PROCEDURES:

Same as Notification procedures. Requesters should also reasonably identify the record, specify the information they are contesting and state the corrective action sought, and the reasons for the correction, with supporting justification showing how the record is incomplete, untimely, inaccurate or irrelevant. These procedures are in accordance with SSA regulations (20 CFR 401.65(a)).

RECORD SOURCE CATEGORIES:

Information in this system is obtained from claimants, beneficiaries, applicants and recipients; accumulated by SSA from reports of employers or self-employed individuals; various local, State, and Federal agencies; claimant representatives and other sources to support factors of entitlement and continuing eligibility or to provide leads information.

SYSTEMS EXEMPTED FROM CERTAIN PROVISIONS OF THE PRIVACY ACT:

None.

[FR Doc. E6–11782 Filed 7–24–06; 8:45 am]

BILLING CODE 4191–02–P

SOCIAL SECURITY ADMINISTRATION

Privacy Act of 1974; as Amended; New System of Records and New Routine Use Disclosures

AGENCY: Social Security Administration (SSA).

ACTION: Proposed new system of records and routine uses.

SUMMARY: In accordance with the Privacy Act (5 U.S.C. 552a(e)(4) and (e)(11)), we are issuing public notice of our intent to establish a new system of records entitled *Attorney and Eligible Direct Pay Non-Attorney (EDPNA) 1099–MISC File*, hereinafter referred to as the *Attorney/EDPNA 1099–MISC File* system of records, and routine uses applicable to the system of records. We are also issuing notice that we may disclose personally identifiable information from the *Attorney/EDPNA 1099–MISC File* to consumer reporting agencies in accordance with 5 U.S.C. 552a(b)(12) and 31 U.S.C. 3711(e). Further, we give notice that we will disclose the taxpayer identification numbers (TIN)/Social Security numbers (SSN) and other information maintained in this file to employers for the purpose of reporting and collecting delinquent debts that may arise out of representational fee payments made to representatives. See 31 U.S.C. 7701(c)(3). We invite public comment on this proposal.

DATES: We filed a report of the proposed *Attorney/EDPNA 1099–MISC File* system of records and the applicable routine uses with the Chairman of the Senate Committee on Homeland Security and Governmental Affairs, the Chairman of the House Committee on Government Reform, and the Director, Office of Information and Regulatory Affairs, Office of Management and Budget (OMB) on July 18, 2006. The proposed *Attorney/EDPNA 1099–MISC File* system of records and the proposed routine uses will become effective on August 26, 2006, unless we receive comments warranting that they not be effective.

ADDRESSES: Interested individuals may comment on this publication by writing to the Deputy Executive Director, Office of Public Disclosure, Office of the General Counsel, Social Security Administration, 3–A–6 Operations Building, 6401 Security Boulevard, Baltimore, Maryland 21235–6401. All comments received will be available for public inspection at the above address.

FOR FURTHER INFORMATION CONTACT: Ms. Christine W. Johnson, Lead Social Insurance Specialist, Strategic Issues Team, Office of Public Disclosure, Office of the General Counsel, Social Security Administration, Room 3–A–6 Operations Building, 6401 Security Boulevard, Baltimore, Maryland 21235–6401, telephone: (410) 965–8563, e-mail: *chris.w.johnson@ssa.gov.*

SUPPLEMENTARY INFORMATION:

I. Background and Purpose of the Proposed New Attorney/EDPNA 1099–MISC File System of Records

A. General Background

Under sections 206(a) and 1631(d)(2) of the Social Security Act and sections 302 and 303 of the Social Security Protection Act (SSPA) of 2004 (Pub. L. 108–203), SSA has the authority and responsibility to determine the maximum fees that claimants' representatives may charge and collect from claimants they represent before SSA, and to directly pay those fees out of claimants' past-due benefits, to attorney and EDPNA representatives. SSA is also responsible to directly pay fees awarded to an attorney by a Federal court under sections 206(b) and 1631(d)(2) of the Act. Changes in the Internal Revenue Service Federal Income Tax Regulations (26 CFR part 1), promulgated under sections 6041 and 6045 of the Internal Revenue Code (IRC) require SSA, in the course of its business, to issue 1099–MISC information returns for aggregate payments of $600.00 or more in a calendar year. The returns must be filed whether or not the services were performed for SSA. Therefore, representatives who meet the requirements to receive representational fee payments and do not waive payment from SSA could meet the reporting requirement of the IRC. Further, when the attorney or EDPNA representative works for an employer (*e.g.*, law firm, partnership or other business entity) and we have the employer's name, address and EIN information in our file a 1099–MISC information return will also be issued to the employer.

Further, the Debt Collection Improvement Act of 1996, 31 U.S.C. 7701, requires all persons doing business with a federal agency to provide TINs/SSNs. A person is considered to be ''doing business'' with an agency if the agency assesses a fee on the person. Under sections 206(d) and 1631(d)(2)(C) of the Social Security Act

(42 U.S.C. 406(d) and 1383(d)(2)(C)), SSA assesses a fee for determining and paying the fee each time it directly pays a representational fee to a claimant's representative. Moreover, the representational fees that SSA directly pays to representatives are funds withheld from benefit payments that are redirected to the representatives from claimants. Therefore, SSA is ''doing business'' with all representatives that it pays. To this end, pursuant to the Debt Collection Improvement Act, SSA will also use the TINs/SSNs maintained in the *Attorney/EDPNA 1099–MISC File* for the purpose of reporting and collecting any delinquent debts that may arise out of the representational fee payments that SSA makes to representatives.

Thus, the proposed *Attorney/EDPNA 1099–MISC File* will facilitate the efficient collection and maintenance of data needed for the verification and issuance of 1099–MISC information returns for reporting purposes, as well as the reporting and collection of delinquent debts that may arise from payments to representatives. For example, the file will maintain the names of representatives eligible to receive direct fee payments, TINs/SSNs, tax mailing address, notice/payment address, each individual payment amount, and sanction history as appropriate. The file will also retain employer identification data and any other information required by the Commissioner for verification and issuance of 1099–MISC information returns. The proposed *Attorney/EDPNA 1099–MISC File* not only responds to the requirements of the IRC, it also facilitates accuracy in SSA recordkeeping and SSA efforts to collect debts arising out of the direct payment of representational fees.

B. Collection and Maintenance of Data in the Attorney/EDPNA 1099–MISC File System of Records

The Attorney/EDPNA 1099–MISC File will maintain identifying information on all representatives who receive direct fee payments for services performed for claimants before SSA and the Federal courts, and on their employers. See the ''Categories of records'' section of the notice below for a full description of the data that will be maintained in the system of records.

II. Proposed Routine Use Disclosures of Data Maintained in the Proposed Attorney/EDPNA 1099–MISC File System of Records

A. Proposed Routine Use Disclosures

We are proposing to establish the following routine use disclosures of information that will be maintained in the proposed new Attorney/EDPNA 1099–MISC File system of records:

1. To the Office of the President for the Purpose of Responding to an Individual Pursuant to an Inquiry Received From That Individual or From a Third Party on His or Her Behalf

We will disclose information under this routine use only in situations in which an individual may contact the Office of the President, seeking that Office's assistance in a matter relating to the *Attorney/EDPNA 1099–MISC File.* Information will be disclosed when the Office of the President makes an inquiry and indicates that it is acting on behalf of the individual whose record is requested.

2. To a Congressional Office in Response to An Inquiry From That Office Made at the Request of the Subject of a Record

We will disclose information under this routine use only in situations in which the individual may ask his or her congressional representative to intercede in a matter relating to the *Attorney/EDPNA 1099–MISC File.* Information will be disclosed when the congressional representative makes an inquiry and indicates that he or she is acting on behalf of the individual whose record is requested.

3. To the Internal Revenue Service and to State and Local Government Tax Agencies in Response to Inquiries Regarding Receipt of Fees Paid in Any Calendar Year

We will disclose information under this routine use to the Internal Revenue Service (IRS) and to State and local government tax agencies, as necessary, regarding fees paid directly by SSA beginning calendar year 2007 and subsequent taxable years, as well as any other relevant and necessary information regarding fees paid to the qualified claimant representatives as appropriate.

4. To the Internal Revenue Service, Department of the Treasury, for the Purpose of Auditing Social Security Administration's Compliance With the Safeguard Provisions of the Internal Revenue Code of 1986, as Amended

This proposed routine use would allow the IRS to audit SSA's maintenance of earnings and wage information in the Attorney/EDPNA 1099–/MISC File to ensure that SSA complies with the safeguard requirements of the IRC.

5. To the Department of Justice (DOJ), a Court, or Other Tribunal, or Other Party Before Such Tribunal When

(a) Social Security Administration (SSA), or any component thereof; or

(b) any SSA employee in his/her official capacity; or

(c) any SSA employee in his/her individual capacity where DOJ (or SSA where it is authorized to do so) has agreed to represent the employee; or

(d) the United States, or any agency thereof, where SSA determines that the litigation is likely to affect the operations of SSA or any of its components is a party to litigation or has an interest in such litigation, and SSA determines that the use of such records by DOJ, a court, or other tribunal is relevant and necessary to the litigation, provided, however, that in each case, SSA determines that such disclosure is compatible with the purpose for which the records were collected.

We will disclose information under this routine use only as necessary to enable DOJ to effectively represent or defend SSA, its components or employees in litigation involving the proposed system of records or when the United States is a party to litigation and SSA has an interest in the litigation.

6. To the Department of Justice for

(a) investigating and prosecuting violations of the Social Security Act to which criminal penalties attach;

(b) representing the Commissioner; or

(c) investigating issues of fraud or violation of civil rights by agency officers or employees.

We will disclose information under this routine use only as necessary to enable DOJ to represent SSA in matters concerning violations of the Social Security Act, to represent the Commissioner of Social Security, or to investigate issues of fraud or violations of civil rights by SSA officers or employees.

7. To Contractors and Other Federal Agencies, as Necessary, for the Purpose of Assisting Social Security Administration (SSA) in the Efficient Administration of Its Programs. We Will Disclose Information Under This Routine Use Only in Situations in Which SSA May Enter a Contractual or Similar Agreement With a Third Party To Assist in Accomplishing an Agency Function Relating to This System of Records

SSA occasionally contracts out certain of its functions when this would contribute to effective and efficient operations. For example, this may

include contractors, as authorized by 31 U.S.C. 3718, or Federal agencies that either operate debt collection centers or that will assist SSA in collecting debts through Federal salary, administrative, and tax refund offset as provided by 5 U.S.C. 3716 and 3720A. The debts collected will only include those owed by claimants' representatives arising out of excess or erroneous representational fee payments made by SSA. SSA must be able to give a contractor or Federal agency whatever information SSA can legally provide in order for the contractor or Federal agency to fulfill its duties. In situations in which we use contractors, safeguards are provided in the contract prohibiting the contractor from using or disclosing the information for any purpose other than that described in the contract.

8. To Student Volunteers, Individuals Working Under a Personal Services Contract, and Other Workers Who Technically Do Not Have the Status of Federal Employees, When They Are Performing Work for the Social Security Administration (SSA), as Authorized by Law, and They Need Access to Personally Identifiable Information in SSA Records in Order To Perform Their Assigned Duties

Under certain Federal statutes, SSA is authorized to use the service of volunteers and participants in certain educational, training, employment and community service programs. An example of such statutes and programs includes: 5 U.S.C. 2753 regarding the College Work-Study Program. We will disclose information under this routine use only when SSA uses the services of these individuals, and they need access to information in this system to perform their assigned agency duties.

9. To Federal, State and Local Law Enforcement Agencies and Private Security Contractors as Appropriate, Information Necessary

- To enable them to protect the safety of Social Security Administration (SSA) employees and customers, the security of the SSA workplace and the operation of SSA facilities; or
- To assist investigations or prosecutions with respect to activities that affect such safety and security or activities that disrupts the operation of SSA facilities.

We will disclose information under this routine use to law enforcement agencies and private security contractors when information is needed to respond to, investigate, or prevent activities that jeopardize the security and safety of SSA customers, employees or workplaces or that otherwise disrupt the operation of SSA facilities. Information would also be disclosed to assist in the prosecution of persons charged with violating Federal or local law in connection with such activities.

10. To the General Services Administration and the National Archives and Records Administration (NARA) Under 44 U.S.C. 2904 and § 2906, as Amended by the NARA Act of 1984, Information Which Is Not Restricted From Disclosure by Federal Law for the Use of Those Agencies in Conducting Records Management Studies

The Administrator of the General Services Administration (GSA) and the Archivist of NARA are charged by 44 U.S.C. 2904 with promulgating standards, procedures and guidelines regarding record management and conducting records management studies. 44 U.S.C. 2906, as amended, provides that GSA and NARA are to have access to federal agencies' records and that agencies are to cooperate with GSA and NARA. In carrying out these responsibilities, it may be necessary for GSA and NARA to have access to this proposed system of records. In such instances, the routine use will facilitate disclosure.

11. To Employers To Assist the Social Security Administration (SSA) in the Collection of Debts Owed by Claimants' Representatives Who Received an Excess or Erroneous Representational Fee Payment and Owe a Delinquent Debt to SSA. Disclosure Under This Routine Use Is Authorized Under the Debt Collection Improvement Act of 1966 (Pub. L. 104–134) and Implemented Through Administrative Wage Garnishment Provisions of This Act. See 31 U.S.C. 3720D

SSA is obligated to attempt to collect debts owed to it. Under 31 U.S.C. 3720D, implemented by SSA regulations (see 20 CFR Part 22, Subpart E), SSA may issue administrative wage garnishment orders to the employers of persons who owe debts to SSA. SSA will only provide employers with the minimal information necessary to allow employers to comply with our orders.

12. To Employers of Claimants' Representatives (e.g., Law Firms, Partnerships or Other Business Entities) in Accordance With the Requirements of Sections 6041 and 6045(f) of the Internal Revenue Code as Implemented by the IRS Regulations Found at 26 CFR 1.6041–1, and as Necessary To Carry Out the Attorney/EDPNA Fee Reporting Program

We will disclose information under this routine use to employers of claimants' representatives in accordance with the requirements of sections 6041 and 6045(f) of the Internal Revenue Code as implemented by IRS regulations found at 26 CFR 1.6041–1, with respect to issuance of 1099–MISC information return forms. SSA will only provide employers with a copy of the 1099–MISC issued to the employee.

B. Compatibility of Proposed Routine Uses

The Privacy Act (5 U.S.C. 552a(b)(3)) and our disclosure regulations (20 CFR Part 401) permit us to disclose information under a published routine use for a purpose that is compatible with the purpose for which we collected the information. SSA's regulations at 20 CFR 401.150(c) permit us to disclose information under a routine use where necessary to carry out SSA programs. SSA's regulations at 20 CFR 401.120 provide that we will disclose information when a law specifically requires the disclosure. The proposed routine uses numbered 1 through 9, 11 and 12 above, will ensure efficient performance of our functions relating to the purpose and administration of the proposed *Attorney/EDPNA 1099–MISC File;* the disclosures that would be made under routine use number 10 are required by Federal law. The proposed routine uses are appropriate and meet the relevant statutory and regulatory criteria.

III. Disclosure to Consumer Reporting Agencies

The Privacy Act of 1974, as amended (5 U.S.C. 552a(b)(12)), permits Federal agencies to disclose certain information to consumer reporting agencies in accordance with 31 U.S.C. 3711(e) without the consent of the individuals to whom the information pertains. The purpose of this disclosure is to provide an incentive for individuals to pay any outstanding debts they owe to the Federal government by including information about these debts in the records that are identified in the records relating to those persons maintained by consumer reporting agencies. This is a practice commonly used by the private

sector. The information disclosed will be limited to that needed to establish the identity of the individual debtor, the amount, status, and history of the debt; and the agency or program under which the debt arose.

We have added the following statement at the end of the routine uses section of the proposed system of records:

Disclosure pursuant to 5 U.S.C. § 552a(b)(12) may be made to consumer reporting agencies as defined in the Fair Credit Reporting Act (15 U.S.C. § 1681a(f)) or the Federal Claims Collection Act of 1966 (31 U.S.C. § 3701, et seq.), as amended. The disclosure will be made in accordance with 31 U.S.C. § 3711(e). The purpose of this disclosure is to aid in the collection of outstanding debts owed to the Federal government, typically, to provide an incentive for debtors to repay delinquent Federal government debts by making these debts part of their credit records. The information to be disclosed is limited to the individual's name, address, SSN, and other information necessary to establish the individual's identity, the amount, status, and history of the debt; and the agency or program under which the debt arose.

IV. Records Storage Medium and Safeguards for the Proposed Attorney/EDPNA 1099–MISC File System of Records

The Attorney/EDPNA 1099–MISC File is a repository for records in paper and electronic form. Only authorized SSA personnel who have a need for the information in the performance of their official duties will be permitted access to the information. We will safeguard the security of the information by requiring the use of access codes to enter the computer systems that will maintain the data, and will store computerized records in secured areas that are accessible only to employees who require the information to perform their official duties. Safeguards include a lock/unlock password system, exclusive use of leased telephone lines, a terminal-oriented transaction matrix, and an audit trail. Any manually maintained records will be kept in locked cabinets or in otherwise secure areas. Furthermore, SSA employees having access to SSA databases maintaining personal information must sign a sanction document annually, acknowledging their accountability for making unauthorized access to or disclosure of such information.

Contractor personnel having access to data in the proposed *Attorney/EDPNA 1099–MISC File* will be required to adhere to SSA rules concerning safeguards, access and use of the data.

SSA personnel having access to the data on this system will be informed of the criminal penalties provided in the Privacy Act and other statutes for unauthorized access to or disclosure of information maintained in this system. See 5 U.S.C. 552a(i)(1).

VI. Effect of the Proposed Attorney/EDPNA 1099–MISC File System of Records on the Rights of Individuals

The proposed *Attorney/EDPNA 1099–MISC File* system of records will maintain only that information that is necessary for the efficient and effective:

- Verification and issuance of 1099–MISC information returns to representatives who receive direct fee payments;
- Issuance of 1099–MISC information returns to employers of claimants' representatives;
- Reporting required by the IRC; and
- Collection or reporting of delinquent debts that might arise from payments made to representatives.

Security measures will be employed that protect access to and preclude unauthorized disclosure of records in the proposed system of records. Therefore, we do not anticipate that the proposed system of records will have any unwarranted adverse effect on the rights of individuals.

Dated: July 18, 2006.

Jo Anne B. Barnhart,

Commissioner.

Social Security Administration

Notice of System of Records Required by the Privacy Act of 1974

60–0325

SYSTEM NAME:

Attorney/EDPNA 1099–MISC File, Social Security Administration (SSA), Deputy Commissioner for Budget, Finance and Management

SECURITY CLASSIFICATION:

None.

SYSTEM LOCATION:

The *Attorney/EDPNA 1099–MISC File* is established when claimants' representatives who are eligible to receive direct fee payments file a request for direct payment through the internet, by mail, or in person and the information is maintained in the National Computer Center at SSA Headquarters. The computerized records and database are maintained at the Social Security Administration, Office of Systems, 6401 Security Boulevard, Baltimore, Maryland 21235.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

This system covers only claimants' representatives who are eligible to receive direct payment of representational fees for representing SSA claimants at the administrative or court level in SSA-related matters.

CATEGORIES OF RECORDS IN THE SYSTEM:

The *Attorney/EDPNA 1099–MISC File* will maintain the following information: Names of representatives eligible to receive direct fee payments, taxpayer identification numbers (TIN)/Social Security numbers (SSN), tax mailing address, notice/payment address, type of representative (*e.g.*, Attorney or EDPNA), tax identification number, court-standing information, sanction-related information (*e.g.*, ''Disqualified or Suspended,'' and start/stop date of sanction), signature date on the Appointment of Representative (Form SSA–1696–U4) or equivalent written statement, termination of service date, business affiliation information (*e.g.*, sole proprietor or single-member Limited Liability Company/Limited Liability Partnership; or partner or salaried employee), telephone/fax numbers, name and address of entity (*e.g.*, Firm, Other), EIN of entity, business affiliations, and direct deposit information. The system will also contain relevant claimants' SSNs.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

Sections 205, 206, 1631(d)(1) and 1631(d)(2) of the Act, as amended, and Sections 6041 and 6045 of the Internal Revenue Code (26 CFR Part 1).

PURPOSE(S):

The *Attorney/EDPNA 1099–MISC File* will ensure appropriate and efficient collection, maintenance and issuance of 1099–MISC information returns to representatives eligible to receive direct fee payments for services rendered to claimants in proceedings before SSA or a Federal court. The file will also ensure issuance of 1099–MISC information returns to employers of claimants' representatives when information about the employer is known. The information is used throughout SSA for the purpose of verifying, documenting, and organizing the information for reporting purposes. The file will also be used in determining whether representatives owe SSA a debt based on an excess or erroneous fee payment and to assist SSA in its representative sanction and debt collection process.

The *Attorney/EDPNA 1099–MISC File* may also be used for quality review, evaluation, and measurement studies, and other statistical and research purposes. Extracts may be maintained as interviewing tools, activity logs, records of claims clearance, and records of type or nature of actions taken.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

Disclosures may be made for routine uses as indicated below. However, any information defined as ''return or return information'' under 26 U.S.C. 6103 of the Internal Revenue Code (IRC) will not be disclosed unless authorized by the IRC, the Internal Revenue Service (IRS), or IRS regulations:

1. To the Office of the President for the purpose of responding to an individual pursuant to an inquiry received from that individual or from a third party on his/her behalf.

2. To a congressional office in response to an inquiry from that office made at the request of the subject of the record.

3. To the Internal Revenue Service and to State and local government tax agencies in response to inquiries regarding receipt of fees paid directly by SSA in calendar year 2007 and continuing.

4. To the Internal Revenue Service, Department of the Treasury, for the purpose of auditing Social Security Administration's compliance with the safeguard provisions of the Internal Revenue Code of 1986, as amended.

5. To the Department of Justice, a court, or other tribunal, or other party before such tribunal when:

(a) Social Security Administration, or any component thereof;

(b) Any SSA employee in his/her official capacity;

(c) Any SSA employee in his/her individual capacity where DOJ (or SSA where it is authorized to do so) has agreed to represent the employee; or

(d) The United States, or any agency thereof, where SSA determines that the litigation is likely to affect the operations of SSA or any of its components

is a party to litigation or has an interest in such litigation, and SSA determines that the use of such records by DOJ, a court, or other tribunal is relevant and necessary to the litigation, provided, however, that in each case, SSA determines that such disclosure is compatible with the purpose for which the records were collected.

6. To Department of Justice for:

(a) Investigating and prosecuting violations of the Social Security Act to which criminal penalties attach;

(b) Representing the Commissioner; or

(c) Investigating issues of fraud or violation of civil rights by agency officers or employees.

7. To contractors and other Federal agencies, as necessary, for the purpose of assisting SSA in the efficient administration of its programs. We will disclose information under this routine use only in situations in which SSA may enter a contractual or similar agreement with a third party to assist in accomplishing an agency function relating to this system of records.

8. To student volunteers, individuals working under a personal services contract, and other workers who technically do not have the status of Federal employees, when they are performing work for the Social Security Administration (SSA), as authorized by law, and they need access to personally identifiable information in SSA records in order to perform their assigned duties.

9. To Federal, State and local law enforcement agencies and private security contractors as appropriate, information necessary:

- To enable them to protect the safety of Social Security Administration employees and customers, the security of the SSA workplace and the operation of SSA facilities; or
- To assist in investigations or prosecutions with respect to activities that affect such safety and security or activities that disrupts the operation of SSA facilities.

10. To the General Services Administration and the National Archives and Records Administration under 44 U.S.C. 2904 and 2906, as amended by the NARA Act of 1984, information which is not restricted from disclosure by Federal law for use by those agencies in conducting records management studies.

11. To employers to assist the Social Security Administration (SSA) in the collection of debts owed by claimants' representatives who received an excess or erroneous representational fee payment and owe a delinquent debt to SSA. Disclosure under this routine use is authorized under the Debt Collection Improvement Act of 1966 (Pub. L. 104–134) and implemented through administrative wage garnishment provisions of this Act (31 U.S.C. 3720D).

12. To employers of claimants' representatives (*e.g.*, firms, partnerships or other business entities) in accordance with the requirements of sections 6041 and 6045(f) of the Internal Revenue Code as implemented by IRS regulations found at 26 CFR 1.6041–1, and as necessary to carry out the Attorney/EDPNA Fee reporting program.

DISCLOSURE TO CONSUMER REPORTING AGENCIES:

Disclosure pursuant to 5 U.S.C. 552a(b)(12) may be made to consumer reporting agencies as defined in the Fair Credit Reporting Act (15 U.S.C. 1681a(f)) or the Federal Claims Collection Act of 1966 (31 U.S.C. 3701, *et seq.*), as amended. The disclosure will be made in accordance with 31 U.S.C. 3711(e). The purpose of this disclosure is to aid in the collection of outstanding debts owed to the Federal government, typically, to provide an incentive for debtors to repay those delinquent debts by making the debts part of their credit records. The information to be disclosed is limited to the individual's name, address, SSN, and other information necessary to establish the individual's identity; the amount, status, and history of the debt; and the agency or program under which the debt arose.

EXTENDED USE OF TAXPAYER IDENTIFICATION NUMBERS/SOCIAL SECURITY NUMBERS:

Under the Debt Collection Improvement Act of 1996, 31 U.S.C. 7701, each Federal agency must require all persons doing business with that Federal agency to provide their TINs/SSNs. A person is considered to be ''doing business'' with an agency if the agency assesses a fee on the person. Under sections 206(d) and 1631(d)(2)(C) of the Social Security Act (42 U.S.C. 406(d) and 1383(d)(2)(C)), SSA assesses a fee each time it directly pays a representational fee to a claimant's representative. Further, the representational fees that SSA directly pays to representatives are funds withheld from benefit payments that are redirected to the representatives from claimants. Therefore, SSA is ''doing business'' with all representatives to whom it pays fees. Pursuant to the Debt Collection Improvement Act of 1996, 31 U.S.C. 7701(c)(3), SSA gives notice that it intends to use the TINs/SSNs for the purpose of collecting or reporting any delinquent debts that arise out of the representational fee payments that SSA makes to representatives. SSA will only disclose TINs/SSNs when necessary to facilitate debt collection or reporting as indicated by Federal statute or regulation.

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING AND DISPOSING OF RECORDS IN THE SYSTEM:

STORAGE:

Records are maintained in both electronic and paper form.

RETRIEVABILITY:

Records are retrieved by SSN or alphabetically by the representative's name.

SAFEGUARDS:

Attorney/EDPNA 1099–MISC files are protected through limited access to SSA records. Access to the records is limited to those employees who require such access in the performance of their

official duties. All employees are instructed about SSA confidentiality rules as part of their initial orientation training.

Safeguards for automated records have been established in accordance with the Systems Security Handbook. For computerized records electronically transmitted between SSA's central office and field office locations (including organizations administering SSA programs under contractual agreements), safeguards include a lock/unlock password system, exclusive use of leased telephone lines, a terminal-oriented transaction matrix, and an audit trail. Access *http://www.ssa.gov/foia/bluebook/app_g.htm* for additional information regarding the safeguards SSA employs to protect its paper and automated records.

RETENTION AND DISPOSAL:

The information contained in the Attorney and Eligible Direct Pay Non-Attorney (EDPNA) 1099–MISC File will be retained for 3 years. An SF–115, Request for Records Disposition Authority must be written and presented to the National Archives and Records Administration for approval since there are no existing schedules that cover these records. None of the information contained in this database may be destroyed/deleted prior to the approval of the disposition schedule. All records must be definitively destroyed in accordance with their appropriate retention schedules.

SYSTEM MANAGER(S) AND ADDRESS:

Deputy Commissioner for Budget, Finance and Management, 6401 Security Boulevard, Baltimore, Maryland 21235.

NOTIFICATION PROCEDURE(S):

An individual can determine if this system contains a record about him/her by writing to the system manager(s) at the above address and providing his/her name, SSN or other information that may be in the system of records that will identify him/her. An individual requesting notification of records in person should provide the same information, as well as an identity document, preferably with a photograph, such as a driver's license or some other means of identification. If an individual does not have any identification document sufficient to establish his/her identity, the individual must certify in writing that he/she is the person claimed to be and that he/she understands that the knowing and willful request for, or acquisition of, a record pertaining to another individual under false pretenses is a criminal offense.

If notification is requested by telephone, an individual must verify his/her identity by providing identifying information that parallels information in the record to which notification is being requested. If it is determined that the identifying information provided by telephone is insufficient, the individual will be required to submit a request in writing or in person. If an individual is requesting information by telephone on behalf of another individual, the subject individual must be connected with SSA and the requesting individual in the same phone call. SSA will establish the subject individual's identity (his/her name, SSN, address, date of birth, and place of birth, along with one other piece of information such as mother's maiden name) and ask for his/her consent to providing information to the requesting individual.

If a request for notification is submitted by mail, the representative must include a notarized statement to SSA to verify his/her identity or must certify in the request that he/she is the person claimed to be and that he/she understands that the knowing and willful request for, or acquisition of, a record pertaining to another individual under false pretenses is a criminal offense. These procedures are in accordance with SSA regulations (20 CFR 401.40(c)).

RECORD ACCESS PROCEDURE(S):

Same as Notification procedures. Requesters also should reasonably specify the record contents they are seeking. These procedures are in accordance with SSA regulations (20 CFR 401.40(c)).

CONTESTING RECORD PROCEDURE(S):

Same as Notification procedures. Requesters also should reasonably identify the record, specify the information they are contesting, and state the corrective action sought and the reasons for the correction with supporting justification showing how the record is untimely, incomplete, inaccurate, or irrelevant. These procedures are in accordance with SSA regulations (20 CFR 401.65(a)).

RECORD SOURCE CATEGORIES:

Information in this system of records is obtained from claimant representatives or SSA records (*e.g.*, the Master Beneficiary Record, Supplemental Security Income Record, Numident Record).

SYSTEMS EXEMPTED FROM CERTAIN PROVISIONS OF THE PRIVACY ACT:

None.

[FR Doc. E6–11784 Filed 7–24–06; 8:45 am]
BILLING CODE 4191–02–P

DEPARTMENT OF TRANSPORTATION

Federal Highway Administration

Notice of Final Federal Agency Actions on Proposed Highway in Rhode Island

AGENCY: Federal Highway Administration (FHWA), DOT.

ACTION: Notice of Limitation on Claims for Judicial Review of Actions by FHWA and Other Federal Agencies.

SUMMARY: This notice announces actions taken by FHWA and other Federal agencies that are final within the meaning of 23 U.S.C. 139(l)(1). The actions relate to a proposed highway project, Improvements to the U.S. Route 6/Route 10 Interchange in Providence County in the State of Rhode Island. Those actions grant licenses, permits, and approvals for the project.

DATES: By this notice, the FHWA is advising the public of final agency actions subject to 23 U.S.C. 139(l)(1). A claim seeking judicial review of the Federal agency actions on the highway project will be barred unless the claim is filed on or before January 25, 2007. If the Federal law that authorizes judicial review of a claim provides a time period of less than 180 days for filing such claim, then that shorter time period still applies.

FOR FURTHER INFORMATION CONTACT: Ms. Lucy Garliauskas, Division Administrator, Federal Highway Administration, 380 Westminster Mall, Providence, Rhode Island 02903; e-mail: *Lucy.Garliauskas@fhwa.dot.gov*; telephone: (401) 528–4544. The FHWA Rhode Island Division Office's normal business hours are 7:45 a.m. to 4:15 p.m. (Eastern Time). You may also contact Mr. Edmund T. Parker, Jr., P.E., Rhode Island Department of Transportation, Two Capitol Hill, Providence, Rhode Island 02903; telephone: (401) 222–2023, extension 4100.

SUPPLEMENTARY INFORMATION: Notice is hereby given that the FHWA and other Federal agencies have taken final agency actions by issuing licenses, permits, and approvals for the following highway project in the State of Rhode Island: Improvements to the U.S. Route 6/Route 10 Interchange in Providence County. The project would involve reconstruction of the U.S. Route 6/Route 10 Interchange on new location,

construction of new bridges, and completing all movements of the interchange. The project would include U.S. Route 6 from approximately 1000 feet west of the Hartford Avenue Interchange easterly to Atwells Avenue, and Rhode Island State Route 10 from the Cranston Viaduct to U.S. Route 6.

The actions by the Federal agencies, and the laws under which such actions were taken, are described in the Final Environmental Impact Statement (FEIS) for the project, approved on December 5, 2005, in the FHWA Record for Decision (ROD) issued on June 9, 2006, and in other documents in the FHWA, administrative record. The FEIS, ROD, and other documents in the FHWA administrative record file are available by contacting the FHWA or the Rhode Island Department of Transportation at the addresses provided above. The FEIS and ROD can be viewed and downloaded from the project Web site at *http://www.dot.state.ri.us/* or viewed at public libraries in the project area.

This notice applies to all Federal agency decisions as of the issuance date of this notice and all laws under which such actions were taken, including but not limited to:

1. *General:* National Environmental Policy Act (NEPA) [42 U.S.C. 4321–4351]; Federal-Aid Highway Act [23 U.S.C. 109].

2. *Air:* Clean Air Act, 42 U.S.C. 7401–7671(q).

3. *Land:* Section 4(f) of the Department of Transportation Act of 1966 [49 U.S.C. 3031.

4. *Wildlife:* Endangered Species Act [16 U.S.C. 1531–1544 and Section 1536], Fish and Wildlife Coordination Act [16 U.S.C. 661–667(d)].

5. *Historic and Cultural Resources:* Section 106 of the National Historic Preservation Act of 1966, as amended [16 U.S.C. 470(f) *et seq.*]; Archeological Resources Protection Act of 1977 [16 U.S.C. 470(aa)–11]; Archeological and Historic Preservation Act [16 U.S.C. 469–469(c)].

6. *Social and Economic:* Civil Rights Act of 1964 [42 U.S.C. 2000(d)–2000(d)(1)]; Farmland Protection Policy Act (FPPA) [7 U.S.C. 4201–4209].

7. *Wetlands and Water Resources:* Clean Water Act, 33 U.S.C. 1251–1377 (Section 404, Section 401, Section 319); Safe Drinking Water Act (SDWA), 42 U.S.C. 300(f)–300(j)(6); Rivers and Harbors Act of 1899, 33 U.S.C. 401–406; Wild and Scenic Rivers Act, 16 U.S.C. 1271–1287; Emergency Wetlands Resources Act, 16 U.S.C. 3921, 3931; TEA–21 Wetlands Mitigation, 23 U.S.C. 103(b)(6)(m) 133(b)(11); Flood Disaster Protection Act, 42 U.S.C. 4001–4128.

8. *Executive Orders:* E.O. 11990 Protection of Wetlands; E.O. 11988 Floodplain Management; E.O. 12898, Federal Actions to Address Environmental Justice in Minority Populations and Low Income Populations; E.O. 11593 Protection and Enhancement of Cultural Resources; E.O. 13007 Indian Sacred Sites; E.O. 13287 Preserve America; E.O. 13175 Consultation and Coordination with Indian Tribal Governments.

(Catalog of Federal Domestic Assistance Program Number 20.205, Highway Planning and Construction. The regulations implementing Executive Order 12372 regarding intergovernmental consultation on Federal programs and activities apply to this program.)

Authority: 23 U.S.C. 139(l)(1).

Issued on: July 28, 2006.

Lucy Garliauskas,

Division Administrator, Rhode Island Division, Federal Highway Administration.

[FR Doc. 06–6439 Filed 7–24–06; 8:45 am]

BILLING CODE 4910–22–M

DEPARTMENT OF TRANSPORTATION

Federal Motor Carrier Safety Administration

[FMCSA Docket No. FMCSA–2006–25290]

Commercial Driver's License (CDL) Standards; Isuzu Motors America, Inc.'s Exemption Application

AGENCY: Federal Motor Carrier Safety Administration (FMCSA), DOT.

ACTION: Notice of application for exemption from CDL standards; request for comments.

SUMMARY: FMCSA announces that Isuzu Motors America, Inc. (Isuzu) has applied for an exemption for 76 of its commercial motor vehicle (CMV) drivers to enable them to test-drive Isuzu CMVs in the United States without a U.S. CDL. The Isuzu CMVs are prototypes which require testing under U.S. climatic conditions prior to being placed on the U.S. market. Each of these drivers holds a CDL issued in Japan, but lack the U.S. residency necessary to obtain a CDL in the United States. Isuzu asks that they be exempt from the Federal requirement that drivers of such CMVs hold a CDL issued by one of the States of the United States.

DATES: Comments must be received on or before August 24, 2006.

ADDRESSES: You may submit comments to the DOT Docket Management System (DMS), referencing Docket Number FMCSA–2006–25290, using any of the following methods:

- *Web site: http://dmses.dot.gov.* Follow the instructions for submitting comments on the DOT electronic docket site.
- *Fax:* 1–202–493–2251.
- *Mail:* Docket Management Facility; U.S. Department of Transportation, 400 Seventh Street, SW., Nassif Building, Room PL–401, Washington, DC 20590–0001.
- *Hand Delivery:* Room PL–401 on the plaza level of the Nassif Building, 400 Seventh Street, SW., Washington, DC, between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays.
- *Federal eRulemaking Portal:* Go to *http://www.regulations.gov*. Follow the online instructions for submitting comments.

Instructions: All submissions must include the Agency name and docket numbers for this notice. Note that all comments received will be posted without change to *http://dms.dot.gov*, including any personal information provided. Please see the Privacy Act heading for further information.

Docket: For access to the docket to read background documents or comments received, go to *http://dms.dot.gov* at any time or Room PL–401 on the plaza level of the Nassif Building, 400 Seventh Street, SW., Washington, DC, between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays. The DMS is available 24 hours each day, 365 days each year. If you want us to notify you that we received your comments, please include a self-addressed, stamped envelope or postcard or print the acknowledgment page that appears after submitting comments on-line.

Privacy Act: Anyone may search the electronic form of all comments received into any of our dockets by the name of the individual submitting the comment (or of the person signing the comment, if submitted on behalf of an association, business, labor union, etc.). You may review the Department of Transportation's complete Privacy Act Statement in the **Federal Register** published on April 11, 2000 (65 FR 19477; Apr. 11, 2000). This information is also available at *http://dms.dot.gov*.

FOR FURTHER INFORMATION CONTACT: Mr. Thomas Yager, Chief, Driver and Carrier Operations Division, Office of Bus and Truck Standards and Operations, MC-PSD, Federal Motor Carrier Safety Administration, 400 Seventh Street, SW., Washington, DC 20590–0001. Telephone: 202–366–4009. E-mail: *MCPSD@dot.gov*.

SUPPLEMENTARY INFORMATION:

Background

Section 4007 of the Transportation Equity Act for the 21st Century (Pub. L. 105–178, June 9, 1998, 112 Stat. 107) amended 49 U.S.C. 31315 and 31136(e) to provide authority to grant exemptions from the motor carrier safety regulations. On August 20, 2004, FMCSA published a final rule (69 FR 51589) on section 4007. Under the regulations, FMCSA must publish a notice of each exemption request in the **Federal Register** (49 CFR 381.315(a)). FMCSA must provide the public with an opportunity to inspect the information relevant to the application, including any safety analyses that have been conducted, and it must provide an opportunity for public comment on the request.

FMCSA reviews the safety analyses and the public comments and determines whether granting the exemption would achieve a level of safety equivalent to or greater than the level that would be achieved by the current regulation (49 CFR 381.305). FMCSA's decision must be published in the **Federal Register** (49 CFR 381.315(b)). If FMCSA denies the request, it must state the reason for doing so. If FMCSA grants the exemption, the notice must specify the person or class of persons receiving the exemption and the regulatory provision or provisions from which exemption is being granted. The notice must also specify the effective period of the exemption (up to 2 years) and explain the terms and conditions of the exemption. The exemption may be renewed (49 CFR 381.300(b)).

Application for Exemption

Isuzu has applied for an exemption from the FMCSR provision requiring that drivers of certain CMVs in interstate or intrastate commerce obtain a CDL from a State (49 CFR 383.23). Isuzu requests the exemption because its drivers are residents of Japan and therefore are ineligible to obtain a CDL from a State. The Isuzu CMVs are prototypes which require testing under U.S. climatic conditions prior to being placed on the U.S. market. It is expected that each driver would operate CMVs about 5,000 miles per year. A copy of Isuzu's application is in Docket No. FMCSA–2006–25290.

Japanese Drivers Included in Application

The exemption would enable the following 76 drivers to operate CMVs that will be manufactured, assembled, sold or primarily used in the United States: Aihara Hirokazu, Akira Iiduka, Akira Yoshino, Atsushi Hirotsu, Atsushi Yamazaki, Chito Agatsuma, Fuki Yokoyama, Fumiaki Kubo, Fumiaki Takei, Fuyuki Hamanaka, Go Shinozuka, Hideki Shibata, Hiroaki Kurata, Hiroaki Takahashi, Hiromasa Narita, Hiroshi Osada, Hiroyoshi Morohoshi, Hisashi Hashiguchi, Ichirou Watanabe, Jirou Arai, Junichi Yamada, Jyunichi Suda, Kakuya Sekimoto, Kazuhiro Itou, Kazuhiro Teraguchi, Kazuyoshi Tateishi, Ken Ueda, Kenji Takashima, Kiyoaki Nokura, Kiyoshi Toshima, Kohki Natsumi, Manabu Andou, Masaaki Toriyama, Masahiko Gotou, Masahito Katou, Masayuki Tanaka, Minoru Endou, Misturu Denpouy, Mitsugu Sugiura, Motoyuki Kamo, Naoki Morimoto, Naomi Uchida, Naoyuki Itou, Noboru Azuma, Nobuhisa Okuda, Nobuyuki Iwao, Ryo Sato, Ryouji Matsuzawa, Satoshi Yatomi, Shigeo Shimada, Shinya Ishida, Syouji Takahashi, Tadao Shibuya, Tadashi Shoda, Takahiro Maemoto, Takashi Oguma, Takatomo Omukai, Takauki Asaoka, Takayuki Kaneda, Takeshi Kamei, Tatsumi Wakamori, Tatsuya Kawase, Tatsuya Sakata, Tetsuji Oshima, Tetuya Hiromatsu, Toshiaki Shimizu, Toshihiko Sudo, Tsuchida Minoru, Tsugio Fujita, Yasuhiro Sakai, Yasuo Tamamoto, Yasuyuki Fujita, Yoshiaki Miyamoto, Yoshinori Kunieda, Yoshinori Ugai and Youcihi Kurita.

Isuzu presents evidence of the comprehensive driver training and testing which precedes issuance of a Japanese CDL. Isuzu also provides evidence of the background of each of the 76 drivers. They are automotive engineers and technicians, and each holds a valid Japanese CDL. They are experienced CMV operators, and Isuzu states in its application that none of these drivers has been cited for a traffic violation or has been involved in a traffic accident during the two years prior to the application.

Request for Comments

In accordance with 49 U.S.C. 31315(b)(4) and 31136(e), FMCSA requests public comment from all interested persons, including those with specific data concerning the safety records of the drivers listed in this notice, on Isuzu's application for an exemption from the CDL requirements of 49 CFR 383.23. The Agency requests that comments be submitted by the close of business on August 24, 2006. Comments will be available for examination in the docket. FMCSA will review all comments received by this date, and will determine whether the exemption is consistent with requirements of 49 U.S.C. 31315(b)(4) and 31136(e). Comments received after the closing date will be filed in the public docket and will be considered to the extent practicable, but FMCSA may make a final decision at any time after the close of the comment period.

Authority: 49 U.S.C. 31136 and 31315; and 49 CFR 1.73.

Issued on: July 19, 2006.

David H. Hugel,

Acting Administrator.

[FR Doc. E6–11766 Filed 7–24–06; 8:45 am]

BILLING CODE 4910–EX–P

DEPARTMENT OF TRANSPORTATION

Maritime Administration

[Docket Number 2006 25418]

Requested Administrative Waiver of the Coastwise Trade Laws

AGENCY: Maritime Administration, Department of Transportation.

ACTION: Invitation for public comments on a requested administrative waiver of the Coastwise Trade Laws for the vessel CHARMER.

SUMMARY: As authorized by Public Law 105–383 and Public Law 107–295, the Secretary of Transportation, as represented by the Maritime Administration (MARAD), is authorized to grant waivers of the U.S.-build requirement of the coastwise laws under certain circumstances. A request for such a waiver has been received by MARAD. The vessel, and a brief description of the proposed service, is listed below. The complete application is given in DOT docket 2006–25418 at *http://dms.dot.gov.* Interested parties may comment on the effect this action may have on U.S. vessel builders or businesses in the U.S. that use U.S.-flag vessels. If MARAD determines, in accordance with Public Law 105–383 and MARAD's regulations at 46 CFR Part 388 (68 FR 23084; April 30, 2003), that the issuance of the waiver will have an unduly adverse effect on a U.S.-vessel builder or a business that uses U.S.-flag vessels in that business, a waiver will not be granted. Comments should refer to the docket number of this notice and the vessel name in order for MARAD to properly consider the comments. Comments should also state the commenter's interest in the waiver application, and address the waiver criteria given in § 388.4 of MARAD's regulations at 46 CFR Part 388.

DATES: Submit comments on or before August 24, 2006.

ADDRESSES: Comments should refer to docket number MARAD–2006 25418. Written comments may be submitted by

hand or by mail to the Docket Clerk, U.S. DOT Dockets, Room PL–401, Department of Transportation, 400 7th St., SW., Washington, DC 20590–0001. You may also send comments electronically via the Internet at *http://dmses.dot.gov/submit/.* All comments will become part of this docket and will be available for inspection and copying at the above address between 10 a.m. and 5 p.m., E.T., Monday through Friday, except federal holidays. An electronic version of this document and all documents entered into this docket is available on the World Wide Web at *http://dms.dot.gov.*

FOR FURTHER INFORMATION CONTACT: Joann Spittle, U.S. Department of Transportation, Maritime Administration, MAR–830 Room 7201, 400 Seventh Street, SW., Washington, DC 20590. Telephone 202–366–5979.

SUPPLEMENTARY INFORMATION: As described by the applicant the intended service of the vessel CHARMER is:

Intended Use: ''The intended commercial use is for private passenger yacht charters.''

Geographic Region: The geographical locations of our intended charters are U.S. East Coast from Maine to Florida, including the states of Maine, New Hampshire, Massachusetts, Rhode Island, Connecticut, New York, New Jersey, Delaware, Maryland, Virginia, North Carolina, South Carolina, Georgia and Florida.

Dated: July 18, 2006.

By order of the Maritime Administrator.

Joel C. Richard,

Secretary, Maritime Administration.

[FR Doc. E6–11767 Filed 7–24–06; 8:45 am]

BILLING CODE 4910–81–P

DEPARTMENT OF TRANSPORTATION

Maritime Administration

[Docket Number 2006 25416]

Requested Administrative Waiver of the Coastwise Trade Laws

AGENCY: Maritime Administration, Department of Transportation.

ACTION: Invitation for public comments on a requested administrative waiver of the Coastwise Trade Laws for the vessel GITANA.

SUMMARY: As authorized by Public Law 105–383 and Public Law 107–295, the Secretary of Transportation, as represented by the Maritime Administration (MARAD), is authorized to grant waivers of the U.S.-build requirement of the coastwise laws under certain circumstances. A request for such a waiver has been received by MARAD. The vessel, and a brief description of the proposed service, is listed below. The complete application is given in DOT docket 2006–25416 at *http://dms.dot.gov.* Interested parties may comment on the effect this action may have on U.S. vessel builders or businesses in the U.S. that use U.S.-flag vessels. If MARAD determines, in accordance with Public Law 105–383 and MARAD's regulations at 46 CFR Part 388 (68 FR 23084; April 30, 2003), that the issuance of the waiver will have an unduly adverse effect on a U.S.-vessel builder or a business that uses U.S.-flag vessels in that business, a waiver will not be granted. Comments should refer to the docket number of this notice and the vessel name in order for MARAD to properly consider the comments. Comments should also state the commenter's interest in the waiver application, and address the waiver criteria given in § 388.4 of MARAD's regulations at 46 CFR Part 388.

DATES: Submit comments on or before August 24, 2006.

ADDRESSES: Comments should refer to docket number MARAD–2006 25416. Written comments may be submitted by hand or by mail to the Docket Clerk, U.S. DOT Dockets, Room PL–401, Department of Transportation, 400 7th St., SW., Washington, DC 20590–0001. You may also send comments electronically via the Internet at *http://dmses.dot.gov/submit/.* All comments will become part of this docket and will be available for inspection and copying at the above address between 10 a.m. and 5 p.m., E.T., Monday through Friday, except federal holidays. An electronic version of this document and all documents entered into this docket is available on the World Wide Web at *http://dms.dot.gov.*

FOR FURTHER INFORMATION CONTACT: Joann Spittle, U.S. Department of Transportation, Maritime Administration, MAR–830 Room 7201, 400 Seventh Street, SW., Washington, DC 20590. Telephone 202–366–5979.

SUPPLEMENTARY INFORMATION: As described by the applicant, the intended service of the vessel GITANA is:

Intended Use: ''Uninspected passenger vessel carrying up to six passengers on liveaboard cruises for sailing instruction.''

Geographic Region: Florida East Coast and Florida Keys.

Dated: July 19, 2006.

By order of the Maritime Administrator.

Joel C. Richard,

Secretary, Maritime Administration.

[FR Doc. E6–11769 Filed 7–24–06; 8:45 am]

BILLING CODE 4910–81–P

DEPARTMENT OF TRANSPORTATION

Maritime Administration

[Docket Number 2006 25417]

Requested Administrative Waiver of the Coastwise Trade Laws

AGENCY: Maritime Administration, Department of Transportation.

ACTION: Invitation for public comments on a requested administrative waiver of the Coastwise Trade Laws for the vessel LUNA DANNS.

SUMMARY: As authorized by Public Law 105–383 and Public Law 107–295, the Secretary of Transportation, as represented by the Maritime Administration (MARAD), is authorized to grant waivers of the U.S.-build requirement of the coastwise laws under certain circumstances. A request for such a waiver has been received by MARAD. The vessel, and a brief description of the proposed service, is listed below. The complete application is given in DOT docket 2006–25417 at *http://dms.dot.gov.* Interested parties may comment on the effect this action may have on U.S. vessel builders or businesses in the U.S. that use U.S.-flag vessels. If MARAD determines, in accordance with Public Law 105–383 and MARAD's regulations at 46 CFR Part 388 (68 FR 23084; April 30, 2003), that the issuance of the waiver will have an unduly adverse effect on a U.S.-vessel builder or a business that uses U.S.-flag vessels in that business, a waiver will not be granted. Comments should refer to the docket number of this notice and the vessel name in order for MARAD to properly consider the comments. Comments should also state the commenter's interest in the waiver application, and address the waiver criteria given in § 388.4 of MARAD's regulations at 46 CFR Part 388.

DATES: Submit comments on or before August 24, 2006.

ADDRESSES: Comments should refer to docket number MARAD–2006 25417. Written comments may be submitted by hand or by mail to the Docket Clerk, U.S. DOT Dockets, Room PL–401, Department of Transportation, 400 7th St., SW., Washington, DC 20590–0001. You may also send comments electronically via the Internet at *http://dmses.dot.gov/submit/.* All comments

will become part of this docket and will be available for inspection and copying at the above address between 10 a.m. and 5 p.m., E.T., Monday through Friday, except Federal holidays. An electronic version of this document and all documents entered into this docket is available on the World Wide Web at *http://dms.dot.gov.*

FOR FURTHER INFORMATION CONTACT: Joann Spittle, U.S. Department of Transportation, Maritime Administration, MAR–830 Room 7201, 400 Seventh Street, SW., Washington, DC 20590. Telephone 202–366–5979.

SUPPLEMENTARY INFORMATION: As described by the applicant the intended service of the vessel LUNA DANNS is:

Intended Use: ''Carry passengers, less than 12.''

Geographic Region: Florida, Georgia, South Carolina, North Carolina, Virginia, Maryland, Delaware, New Jersey, New York, Connecticut, Rhode Island, Massachusetts, New Hampshire, Maine, and California.

Dated: July 19, 2006.

By order of the Maritime Administrator.

Joel C. Richard,

Secretary, Maritime Administration.

[FR Doc. E6–11768 Filed 7–24–06; 8:45 am]

BILLING CODE 4910–81–P

DEPARTMENT OF TRANSPORTATION

Maritime Administration

[Docket Number 2006 25412]

Requested Administrative Waiver of the Coastwise Trade Laws

AGENCY: Maritime Administration, Department of Transportation.

ACTION: Invitation for public comments on a requested administrative waiver of the Coastwise Trade Laws for the vessel MALIA KAI.

SUMMARY: As authorized by Public Law 105–383 and Public Law 107–295, the Secretary of Transportation, as represented by the Maritime Administration (MARAD), is authorized to grant waivers of the U.S.-build requirement of the coastwise laws under certain circumstances. A request for such a waiver has been received by MARAD. The vessel, and a brief description of the proposed service, is listed below. The complete application is given in DOT docket 2006–25412 at *http://dms.dot.gov.* Interested parties may comment on the effect this action may have on U.S. vessel builders or businesses in the U.S. that use U.S.-flag vessels. If MARAD determines, in accordance with Public Law 105–383 and MARAD's regulations at 46 CFR Part 388 (68 FR 23084; April 30, 2003), that the issuance of the waiver will have an unduly adverse effect on a U.S.-vessel builder or a business that uses U.S.-flag vessels in that business, a waiver will not be granted. Comments should refer to the docket number of this notice and the vessel name in order for MARAD to properly consider the comments. Comments should also state the commenter's interest in the waiver application and address the waiver criteria given in § 388.4 of MARAD's regulations at 46 CFR Part 388.

DATES: Submit comments on or before August 24, 2006.

ADDRESSES: Comments should refer to docket number MARAD–2006 25412. Written comments may be submitted by hand or by mail to the Docket Clerk, U.S. DOT Dockets, Room PL–401, Department of Transportation, 400 7th St., SW., Washington, DC 20590–0001. You may also send comments electronically via the Internet at *http://dmses.dot.gov/submit/.* All comments will become part of this docket and will be available for inspection and copying at the above address between 10 a.m. and 5 p.m., E.T., Monday through Friday, except federal holidays. An electronic version of this document and all documents entered into this docket is available on the World Wide Web at *http://dms.dot.gov.*

FOR FURTHER INFORMATION CONTACT: Joann Spittle, U.S. Department of Transportation, Maritime Administration, MAR–830 Room 7201, 400 Seventh Street, SW., Washington, DC 20590. Telephone 202–366–5979.

SUPPLEMENTARY INFORMATION: As described by the applicant the intended service of the vessel MALIA KAI is:

Intended Use: ''Sportfishing.''

Geographic Region: Nawilili harbor, Lihue, Hawaii, and State of Hawaii.

Dated: July 19, 2006.

By order of the Maritime Administrator.

Joel C. Richard,

Secretary, Maritime Administration.

[FR Doc. E6–11771 Filed 7–24–06; 8:45 am]

BILLING CODE 4910–81–P

DEPARTMENT OF TRANSPORTATION

Maritime Administration

[Docket Number 2006 25415]

Requested Administrative Waiver of the Coastwise Trade Laws

AGENCY: Maritime Administration, Department of Transportation.

ACTION: Invitation for public comments on a requested administrative waiver of the Coastwise Trade Laws for the vessel TWOCAN.

SUMMARY: As authorized by Public Law 105–383 and Public Law 107–295, the Secretary of Transportation, as represented by the Maritime Administration (MARAD), is authorized to grant waivers of the U.S.-build requirement of the coastwise laws under certain circumstances. A request for such a waiver has been received by MARAD. The vessel, and a brief description of the proposed service, is listed below. The complete application is given in DOT docket 2006–25415 at *http://dms.dot.gov.* Interested parties may comment on the effect this action may have on U.S. vessel builders or businesses in the U.S. that use U.S.-flag vessels. If MARAD determines, in accordance with Public Law 105–383 and MARAD's regulations at 46 CFR Part 388 (68 FR 23084; April 30, 2003), that the issuance of the waiver will have an unduly adverse effect on a U.S.-vessel builder or a business that uses U.S.-flag vessels in that business, a waiver will not be granted. Comments should refer to the docket number of this notice and the vessel name in order for MARAD to properly consider the comments. Comments should also state the commenter's interest in the waiver application, and address the waiver criteria given in § 388.4 of MARAD's regulations at 46 CFR Part 388.

DATES: Submit comments on or before August 24, 2006.

ADDRESSES: Comments should refer to docket number MARAD–2006 25415. Written comments may be submitted by hand or by mail to the Docket Clerk, U.S. DOT Dockets, Room PL–401, Department of Transportation, 400 7th St., SW., Washington, DC 20590–0001. You may also send comments electronically via the Internet at *http://dmses.dot.gov/submit/.* All comments will become part of this docket and will be available for inspection and copying at the above address between 10 a.m. and 5 p.m., E.T., Monday through Friday, except federal holidays. An electronic version of this document and all documents entered into this docket is available on the World Wide Web at *http://dms.dot.gov.*

FOR FURTHER INFORMATION CONTACT: Joann Spittle, U.S. Department of Transportation, Maritime Administration, MAR–830 Room 7201, 400 Seventh Street, SW., Washington, DC 20590. Telephone 202–366–5979.

SUPPLEMENTARY INFORMATION: As described by the applicant the intended service of the vessel TWOCAN is:

Intended Use: ''luxury dive charter.''

Geographic Region: Florida East Coast.

Dated: July 19, 2006.

By order of the Maritime Administrator.

Joel C. Richard,

Secretary, Maritime Administration.

[FR Doc. E6–11770 Filed 7–24–06; 8:45 am]

BILLING CODE 4910–81–P

DEPARTMENT OF THE TREASURY

Office of Foreign Assets Control

Unblocking of Specially Designated National, Liberia Program

AGENCY: Office of Foreign Assets Control, Treasury.

ACTION: Notice.

SUMMARY: The Treasury Department's Office of Foreign Assets Control (''OFAC'') is publishing the name of one person whose property and interests in property have been unblocked pursuant to Executive Order 13348 of July 22, 2004, *Blocking Property of Certain Persons and Prohibiting the Importation of Certain Goods from Liberia,* and pursuant to 31 CFR 501.807.

DATES: The unblocking and removal from the list of Specially Designated Nationals and Blocked Persons by the Secretary of the Treasury of the person identified in this notice whose property and interests in property were blocked pursuant to Executive Order 13348 of July 22, 2004, occurred on June 12, 2006.

FOR FURTHER INFORMATION CONTACT: Jennifer Houghton, Assistant Director, Designation Investigations, Office of Foreign Assets Control, Department of the Treasury, Washington, DC 20220, tel.: 202/622–2420.

SUPPLEMENTARY INFORMATION:

Electronic and Facsimile Availability

This document and additional information concerning OFAC are available from OFAC's Web site (*http://www.treas.gov/ofac*) or via facsimile through a 24-hour fax-on demand service, tel.: (202) 622–0077.

Background

On July 22, 2004, President Bush issued Executive Order 13348 (''the order'' or ''EO 13348''), finding that the actions and policies of former Liberian President Charles Taylor and other persons, in particular their unlawful depletion of Liberian resources and their removal from Liberia, undermined Liberia's transition to democracy, the orderly development of Liberia's political, administrative, and economic institutions and resources, and fueled and exacerbated other conflicts throughout West Africa. The President found that the actions, policies, and circumstances described above constituted an unusual and extraordinary threat to the foreign policy of the United States and declared a national emergency to deal with that threat.

The order included 28 persons in the Annex, which resulted in the blocking of all property or interests in property of these persons that was or thereafter came within the United States or the possession or control of U.S. persons. The order authorizes the Secretary of the Treasury, in consultation with the Secretary of State, to designate additional persons or entities determined to meet certain criteria set forth in EO 13348.

The order also authorizes the Secretary of the Treasury, in consultation with the Secretary of State, to determine that circumstances no longer warrant the inclusion of a person in the Annex to EO 13348 and to unblock any property or interests in property that had been blocked as a result of the person's inclusion in the Annex.

On June 12, 2006, the Acting Director of OFAC, in consultation with the State Department, removed from the Annex and list of Specially Designated Nationals and Blocked Persons the person listed below, whose property and interests in property were blocked pursuant to EO 13348.

The list of the unblocked person follows:

1. Abbas Fawaz

Dated: July 18, 2006.

Barbara C. Hammerle,

Acting Director, Office of Foreign Assets Control.

[FR Doc. E6–11798 Filed 7–24–06; 8:45 am]

BILLING CODE 4811–37–P

DEPARTMENT OF VETERANS AFFAIRS

Research Advisory Committee on Gulf War Veterans' Illnesses; Notice of Meeting

The Department of Veterans Affairs (VA) gives notice under Public Law 92–463 (Federal Advisory Committee Act) that the Research Advisory Committee on Gulf War Veterans' Illnesses will meet on August 14–15, 2006 in room 230, Department of Veterans Affairs, 810 Vermont Avenue, NW., Washington, DC. The sessions will convene at 8 a.m. each day and adjourn at 5:30 p.m. on August 14, and at 3:30 p.m. on August 15. Sessions will be open to the public.

The purpose of the Committee is to provide advice and make recommendations to the Secretary of Veterans Affairs on research plans and research strategies relating to the health consequences of military service in the Southwest Asia theater of operations during the Gulf War.

The Committee will review VA program activities related to Gulf War veterans' illnesses and updates on scientific research on Gulf War illnesses published since the last committee meeting. Additionally, there will be presentations and discussion of changes in immune function and inflammation and immune responses in the central nervous system associated with chronic multisymptom illnesses and/or chemical exposures.

Members of the public may provide up to 5 minute statements during the period reserved for public comments. They may also submit, at the time of the meeting, a 1–2 page summary of their comments for inclusion in the official meeting record. Any member of the public seeking additional information should contact Dr. William Goldberg, Designated Federal Officer, at (202) 254–0294.

Dated: July 17, 2006.

By direction of the Secretary.

E. Philip Riggin,

Committee Management Officer.

[FR Doc. 06–6465 Filed 7–24–06; 8:45 am]

BILLING CODE 8320–01–M

DEPARTMENT OF VETERANS AFFAIRS

Rehabilitation Research and Development Service Scientific Merit Review Board; Notice of Meeting

The Department of Veterans Affairs gives notice under Public Law 92–463 (Federal Advisory Committee Act) that meetings of the Rehabilitation Research and Development Service Scientific Merit Review Board will be held on August 28–31, 2006 at the Hamilton Crowne Plaza Hotel, Washington, DC. The sessions are scheduled to begin at 8 a.m. and end at 5:30 p.m. each day.

The purpose of the Board is to review rehabilitation research and development applications for scientific and technical merit and to make recommendations to the Director, Rehabilitation Research and Development Service, regarding their funding.

The meeting will be open to the public for the August 28, 2006 and August 30, 2006 sessions from 8 a.m. to 9 a.m. for the discussion of

administrative matters, the general status of the program and the administrative details of the review process. The meeting will be closed on August 28 through August 29 from 9 a.m. to 5:30 p.m. and on August 30 through August 31 from 9 a.m. to 5:30 p.m. for the Board's review of research and development applications.

This review involves oral comments, discussion of site visits, staff and consultant critiques of proposed research protocols, and similar analytical documents that necessitate the consideration of the personal qualifications, performance and competence of individual research investigators. Disclosure of such information would constitute a clearly unwarranted invasion of personal privacy. Disclosure would also reveal research proposals and research underway which could lead to the loss of these projects to third parties and thereby frustrate future agency research efforts.

Thus, the closing is in accordance with 5 U.S.C. 552b(c)(6), and (c)(9)(B) and the determination of the Secretary of the Department of Veterans Affairs under Sections 10(d) of Public Law 92–463 as amended by Section 5(c) of Public Law 94–409.

Those who plan to attend the open sessions should contact Dr. Denise Burton, Designated Federal Offier, Portfolio Manager, Rehabilitation Research and Development Service, (122P), Department of Veterans Affairs, 810 Vermont Avenue, NW., Washington, DC 20420, at (202) 254–0268.

Dated: July 17, 2006.

By direction of the Secretary.

E. Philip Riggin,

Committee Management Officer.

[FR Doc. 06–6466 Filed 7–24–06; 8:45 am]

BILLING CODE 8320–01–M

Corrections

Federal Register

Vol. 71, No. 142

Tuesday, July 25, 2006

This section of the FEDERAL REGISTER contains editorial corrections of previously published Presidential, Rule, Proposed Rule, and Notice documents. These corrections are prepared by the Office of the Federal Register. Agency prepared corrections are issued as signed documents and appear in the appropriate document categories elsewhere in the issue.

DEPARTMENT OF AGRICULTURE

Animal and Plant Health Inspection Service

7 CFR Parts 301 and 319

[Docket No. 00–067–2]

RIN 0579–AB55

Gypsy Moth; Regulated Articles

Correction

In rule document E6–11431 beginning on page 40875 in the issue of Wednesday, July 19, 2006, make the following correction:

On page 40875, in the third column, in footnote 1, in the last line, ''*GMChapters.htm*'' should read ''*GM__Chapters.htm*''.

[FR Doc. Z6–11431 Filed 7–24–06; 8:45 am]

BILLING CODE 1505–01–D

Federal Register

Tuesday,
July 25, 2006

Part II

Department of Energy

Office of Energy Efficiency and Renewable Energy

10 CFR Parts 430 and 431

Energy Conservation Program: Test Procedures for Consumer Products and Certain Commercial and Industrial Equipment; Certification, Compliance and Enforcement Requirements for Consumer Products and for Certain Commercial and Industrial Equipment; Technical Amendment; Proposed Rule

DEPARTMENT OF ENERGY

Office of Energy Efficiency and Renewable Energy

10 CFR Parts 430 and 431

[Docket No. EE–RM/TP–05–500]

RIN 1904–AB53

Energy Conservation Program: Test Procedures for Consumer Products and Certain Commercial and Industrial Equipment; Certification, Compliance, and Enforcement Requirements for Consumer Products and for Certain Commercial and Industrial Equipment; Technical Amendment to Energy Conservation Standards for Certain Consumer Products and Commercial and Industrial Equipment

AGENCY: Office of Energy Efficiency and Renewable Energy, Department of Energy.

ACTION: Notice of proposed rulemaking and public meeting.

SUMMARY: The Energy Policy Act of 2005 (EPACT 2005) includes amendments to the Energy Policy and Conservation Act (EPCA) to provide for new Federal energy efficiency and water conservation test procedures, and related definitions, for certain consumer products and certain commercial and industrial equipment. The amendments direct the Department of Energy (DOE or the Department) to establish new test procedures for many of these products and certain equipment, in most cases based on applicable testing practices generally accepted by industry and other government agencies. Today, DOE proposes test procedures for eleven types of products for which EPACT 2005 identified specific test procedures. In addition, DOE proposes test procedures for three other products for which EPACT 2005 did not specify specific test procedures. Furthermore, the Department is proposing to adopt a new version of the current test procedure for small commercial package air-conditioning and heating equipment, which will not change the existing requirements.

The Department is also proposing regulations for sampling during compliance testing, compliance certification, and enforcement to ensure compliance with EPACT's energy conservation standards. Today's proposed rule also includes compliance certification, and enforcement provisions that would also apply to commercial heating, ventilating, and air conditioning products, as well as commercial water heating products. The Department is also announcing a public meeting to discuss all of the above referenced proposals.

Furthermore, the Department is announcing proposed technical corrections to the October 18, 2005 Final Rule, 70 FR 60407, which the Department has described in detail in today's proposed rule and will add to the rule language.

DATES: The Department will hold a public meeting on Tuesday, September 26, 2006, from 9 a.m. to 5 p.m., in Washington, DC. The Department must receive requests to speak at the meeting before 4 p.m., Thursday, September 14, 2006. The Department must receive a signed original and an electronic copy of statements to be given at the public meeting before 4 p.m., Tuesday, September 19, 2006.

The Department will accept comments, data, and information regarding the notice of proposed rulemaking (proposed rule) no later than October 10, 2006. See section VII, ''Public Participation,'' of this proposed rule for details.

ADDRESSES: You may submit comments, identified by docket number EE–RM/TP–05–500 and/or Regulatory Information Number (RIN) 1904–AB53, by any of the following methods:

- Federal eRulemaking Portal: *http://www.regulations.gov*. Follow the instructions for submitting comments.
- E-mail: *testprocedures_EPACT2005@ee.doe.gov*. Include EE–RM/TP–05–500 and/or RIN 1904–AB53 in the subject line of the message.
- Postal Mail: Ms. Brenda Edwards-Jones, U.S. Department of Energy, Building Technologies Program, Mailstop EE–2J, Energy Conservation Test Procedures for Consumer Products and Commercial Equipment, EE–RM/TP–05–500 and/or RIN 1904–AB53, 1000 Independence Avenue, SW., Washington, DC 20585–0121. Telephone: (202) 586–2945. Please submit one signed paper original.
- Hand Delivery/Courier: Ms. Brenda Edwards-Jones, U.S. Department of Energy, Building Technologies Program, Room 1J–018, 1000 Independence Avenue, SW., Washington, DC 20585–0121.

Instructions: All submissions must include the agency name and docket number or RIN for this rulemaking. For detailed instructions on submitting comments and additional information on the rulemaking process, see section VII, ''Public Participation,'' of this proposed rule for details.

Docket: For access to the docket to read background documents or comments received, go to the U.S. Department of Energy, Forrestal Building, Room 1J–018 (Resource Room of the Building Technologies Program), 1000 Independence Avenue, SW., Washington, DC, between 9 a.m. and 4 p.m., Monday through Friday, except Federal holidays. Please call Ms. Brenda Edwards-Jones at (202) 586–2945 for additional information regarding visiting the Resource Room. Please note: The Department's Freedom of Information Reading Room (formerly Room 1E–190 at the Forrestal Building) is no longer housing rulemaking materials.

FOR FURTHER INFORMATION CONTACT: James Raba, U.S. Department of Energy, Office of Energy Efficiency and Renewable Energy, Building Technologies Program, EE–2J, 1000 Independence Avenue, SW., Washington, DC 20585–0121, (202) 586–8654. E-mail: *jim.raba@ee.doe.gov*. Francine Pinto, U.S. Department of Energy, Office of General Counsel, GC–72, 1000 Independence Avenue, SW., Washington, DC 20585, (202) 586–9507. E-mail: *Francine.Pinto@hq.doe.gov*.

SUPPLEMENTARY INFORMATION:

I. Background

The Energy Policy Act of 2005 (EPACT 2005) (Pub. L. 109–58) was enacted on August 8, 2005. Subtitle C of Title I of EPACT 2005 includes provisions that amend Part B of Title III of the Energy Policy and Conservation Act (EPCA) (42 U.S.C. 6291–6309), which provides for an energy conservation program for consumer products other than automobiles, as well as Part C of Title III of EPCA (42 U.S.C. 6311–6317), which provides for a program, similar to the energy conservation program for consumer products in Part B, for certain commercial and industrial equipment. EPACT 2005 prescribes new or amended energy conservation standards and/or test procedures and directs DOE to undertake rulemakings to promulgate such requirements.

On October 18, 2005, DOE placed into Title 10 of the Code of Federal Regulations (CFR) the energy conservation standards and related definitions that EPACT 2005 prescribed (hereafter referred to as the October 2005 final rule). 70 FR 60407. DOE also announced that it was not exercising the discretionary authority provided in EPACT 2005 for the Secretary of Energy (the Secretary) to revise product or equipment definitions and energy conservation standards set forth in the statute, but that it might exercise this authority later.

By today's action, DOE is proposing test procedures for measuring energy efficiency and water-use efficiency and related definitions, as well as test sampling, compliance certification, and enforcement requirements, for various consumer products and commercial and industrial equipment covered by EPACT 2005's amendments to EPCA. Table 1 identifies most of the products and equipment these amendments cover, and shows the ones for which DOE is proposing to adopt test procedures, the sections of EPACT 2005 and EPCA that authorize and require these test procedures, and the sections in the CFR where DOE proposes to place them.

TABLE 1.—TEST PROCEDURES AND GENERAL REQUIREMENTS__AUTHORITY AND PLACEMENT*

Product or equipment type	EPACT 2005 Section	EPCA section	U.S.C. section	10 CFR section (proposed)
Ceiling fans	135(b)(1)	323(b)(16)(A)(i)	42 U.S.C. 6293(b)(16)(A)(i)	430.23(w)
Ceiling fan light kits	135(b)(1)	323(b)(16)(A)(ii)	42 U.S.C. 6293(b)(16)(A)(ii)	430.23(x)
Dehumidifiers	135(b)(1)	323(b)(13)	42 U.S.C. 6293(b)(13)	430.23(z)
Medium base compact fluorescent lamps.	135(b)(1)	323(b)(12)	42 U.S.C. 6293(b)(12)	430.23(y)
Battery chargers	135(c)(4)	325(u)	42 U.S.C. 6295(u)	430.23(aa)
External power supplies	135(c)(4)	325(u)	42 U.S.C. 6295(u)	430.23(bb)
Torchieres*	135(c)(4)	325(x)	42 U.S.C. 6295(x)	430.23(cc)
Unit heaters**	135(c)(4)	325(aa)	42 U.S.C 6295(aa)	Part 431, Subpart N.
Automatic commercial ice makers	136(f)(1)	343(a)(7)(A)	42 U.S.C. 6314(a)(7)(A)	Part 431, Subpart H.
Commercial prerinse spray valves	135(b)(1)	323(b)(14)	42 U.S.C. 6293(b)(14)	Part 431, Subpart O.
Illuminated exit signs	135(b)(1)	323(b)(9)	42 U.S.C. 6293(b)(9)	Part 431, Subpart L.
Traffic signal modules and pedestrian modules.	135(b)(1)	323(b)(11)	42 U.S.C. 6293(b)(11)	Part 431, Subpart M.
Refrigerated bottled or canned beverage vending machines.	135(b)(1)	323(b)(15)	42 U.S.C. 6293(b)(15)	Part 431, Subpart Q.
Very large commercial package air conditioning and heating equipment.	136(f)(1)	343(a)(4)	42 U.S.C. 6314(a)(4)	Part 431, Subpart F.
Commercial refrigerators, freezers, and refrigerator-freezers.	136(f)(1)	343(a)(6)	42 U.S.C. 6314(a)(6)	Part 431, Subpart C.
Ice-cream freezers; commercial refrigerators, freezers, and refrigerator-freezers with a self-contained condensing unit and without doors; and commercial refrigerators, freezers, and refrigerator-freezers with a remote condensing unit.	136(f)(1)(B)	343(a)(6)(A)(i)	42 U.S.C. 6314(a)(6)(A)(i)	Part 431, Subpart C.

* EPACT 2005 does not expressly authorize DOE to promulgate a test procedure for torchieres. However, the statute does expressly authorize energy conservation standards for torchieres thereby implicitly authorizing to DOE to issue the relevant test procedure.

** The Department is proposing to adopt definitions and other general provisions for unit heaters.

II. Summary of Today's Action

Today's proposed rule implements the portions of sections 135 and 136 of EPACT 2005 that amend EPCA. These sections direct the Department to establish test procedures based on specifications of the Federal ENERGY STAR program or industry consensus standards that the statute identifies.[1] Each of these ENERGY STAR specifications and industry standards, however, contains not only energy test procedures, but also provisions that are irrelevant in determining the energy use, water use, or efficiency of the products to which they apply. The Department is proposing to adopt only those sections of the ENERGY STAR specifications and industry consensus standards that specify test procedures relevant to the measurement of energy efficiency or water consumption. The Department proposes to incorporate these sections by reference into its rules, in some cases with clarifying changes or additions that do not alter the substance of the test procedure. The Department would place the test procedures and related definitions for consumer products in 10 CFR part 430 (''Energy Conservation Program for Consumer Products''), and the test procedures and definitions for commercial and industrial equipment in 10 CFR Part 431 (''Energy Efficiency Program for Certain Commercial and Industrial Equipment'').

The Department is also proposing sampling procedures for compliance testing for each type of consumer product and commercial and industrial equipment covered by today's proposed rule. The proposed rule also includes compliance certification and enforcement provisions that would apply to most commercial and industrial equipment other than electric motors and some of the proposed enforcement provisions would not apply to distribution transformers.[2] With a few exceptions, such as the regimen for enforcement testing, today's proposed requirements follow the same approach as regulations under 10 CFR part 430, although in some cases with revised language to clarify the requirements.

In addition, the Department recently incorporated the energy conservation standards prescribed by EPACT 2005 into 10 CFR parts 430 and 431, 70 FR 60407 (October 18, 2005), and has identified several provisions of these technical amendments that do not accurately reflect the provisions of EPACT 2005. A summary discussion of these corrections and clarifications is found in section V. As these changes will merely serve to incorporate the energy and water use standards set forth in EPACT 2005 into DOE's rules, they are not subject to comment. They will, however, be included in the final rule.

III. Discussion—Energy Conservation Test Procedures for Consumer Products and Commercial and Industrial Equipment

A. Ceiling Fans and Ceiling Fan Light Kits

Section 135(c)(4) of EPACT 2005 includes an amendment to section 325 of EPCA (42 U.S.C. 6295) to add subsection (v)(1), which requires test procedures and energy conservation standards for ceiling fans and ceiling fan light kits. Sections 135(b)(1) and 135(c)(4) of EPACT 2005 also contain additional provisions as to test procedures and standards, respectively, for ceiling fans and ceiling fan light kits. Today's proposed rule addresses these products separately because the requirements for them differ.

1. Ceiling Fans. Section 325(v)(1) of EPCA (42 U.S.C. 6295(v)(1)) directs the Secretary to prescribe, by rule, test procedures for ceiling fans. Furthermore, section 135(b)(1) of EPACT 2005 amends section 323(b) of EPCA (42 U.S.C. 6293(b)) to add subparagraph (16)(A)(i), which states that test procedures for ceiling fans ''shall be based on the ''ENERGY STAR Testing Facility Guidance Manual: Building a Testing Facility and Performing the Solid State Test Method for ENERGY STAR Qualified Ceiling Fans, Version 1.1' published by the Environmental Protection Agency'' (EPA).

The Department's adoption of test procedures under these sections is influenced, to a limited extent, by EPCA's new provisions as to standards for ceiling fans. Section 135(c)(4) of EPACT 2005 amends section 325 of EPCA (42 U.S.C. 6295) to add subsection (ff)(1)(A), which prescribes design requirements for ceiling fans. The Department incorporated these requirements into 10 CFR part 430 in the October 2005 final rule. 70 FR 60407. Test procedures under EPCA for consumer products, however, must be designed to ''measure energy efficiency, energy use, * * * or estimated annual operating cost.'' 42 U.S.C. 6293(b)(3). Moreover, test procedures are not required for determining compliance with design standards (42 U.S.C. 6295(s)). Generally, they are unnecessary for assessing whether a product complies with an applicable design standard, and DOE believes they are not needed to determine compliance with EPCA's design standards for ceiling fans. Therefore, today's proposed test procedure for this product does not address these design standards. However, section 135(c)(4) of EPACT 2005 also adds subsection 323(ff)(6) to EPCA, which specifically authorizes DOE to prescribe energy efficiency or energy use standards for the electricity that ceiling fans use to circulate air in a room. Today's proposed test procedures provide a method for testing for airflow efficiency and a method for measuring the energy use and energy efficiency as to the electricity consumed by ceiling fans.

The ENERGY STAR Guidance Manual, on which DOE must base certain of its test procedures, provides definitions of terms, minimum requirements necessary for building a ceiling fan testing chamber, test equipment tolerances, guidance for equipment setup, requirements for test facility fan calibration to a standard calibration fan, procedures for performing product testing for airflow and airflow efficiency, requirements for documentation and reporting test results, and provisions for challenge testing. However, the Guidance Manual does not specifically describe how to measure the power consumed during the airflow test. This allows manufacturers to use different methods for measuring power consumed, and could mean the test results would not be comparable to one another. It could also result in disputes as to the validity of methods used to measure power consumption and of test results. Consequently, to assure comparable and sound results, the Department proposes to include a method for power measurement as part of the test procedure. In addition, the Department believes that the Guidance Manual is too restrictive in requiring that specific proprietary sensors and sensor software be used for performing airflow measurements. Thus, the Department is proposing to allow test facilities to use sensors and sensor software equivalent to the proprietary sensors and sensor software prescribed in the Guidance

[1] Section 135(b)(1) of EPACT 2005, for example, directs that the test procedure for refrigerated bottled or canned vending machines ''shall be based on American National Standards Institute/ American Society of Heating, Refrigerating, and Air-Conditioning Engineers Standard 32.1–2004, entitled 'Method of Testing for Rating Vending Machines for Bottled, Canned or Other Sealed Beverages'.'' (42 USC 6293(b)(15))

[2] Enforcement provisions for distribution transformers are established in the test procedures final rule for distribution transformers published on April 27, 2006. 71 FR 24972. Certification and enforcement for electric motors are in subpart B of 10 CFR part 431.

Manual, provided that the testing facility verifies the performance of the equipment used.

The Department finds that the test methods in the Guidance Manual, with the modifications just described, satisfy the instructions in section 135(b)(1) of EPACT 2005 to test ceiling fans. Therefore, DOE proposes to incorporate the applicable ENERGY STAR test procedure requirements, along with additional requirements on power measurement and the sensors and sensor software used for performing the airflow test, into Appendix U to Subpart B of 10 CFR part 430. This test procedure would also provide a foundation for developing energy conservation standards for airflow efficiency for ceiling fans.

2. Ceiling Fan Light Kits. Section 135(c)(4) of EPACT 2005 amends section 325 of EPCA (42 U.S.C. 6295) to add subsection (v)(1), which directs the Secretary to prescribe, by rule, test procedures for ceiling fan light kits. Additionally, section 135(b)(1) of EPACT 2005 amends section 323(b) of EPCA (42 U.S.C. 6293(b)) to add subparagraph (16)(A)(ii), which states that test procedures for ceiling fan light kits ''shall be based on'' the test methods ''referenced in the ENERGY STAR specifications for Residential Light Fixtures [RLFs] and Compact Fluorescent Light Bulbs [CFLs],'' as in effect on August 8, 2005. The relevant ENERGY STAR specifications in effect at that time were version 3.2 for RLFs, which applies to ceiling fan light kits with sockets for pin-based fluorescent lamps, and version 3.0 for CFLs, which applies to ceiling fan light kits with sockets for screw base lamps. Version 3.2 for RLFs originally became effective on September 19, 2003, and version 3.0 for CFLs originally became effective on January 1, 2004.

Section 135(c)(4) of EPACT 2005 amends section 325 of EPCA (42 U.S.C. 6295) to prescribe standards for certain ceiling fan light kits manufactured on or after January 1, 2007. Specifically, new subsection 325(ff)(2) of EPCA (42 U.S.C. 6295(ff)(2)) provides that ceiling fan light kits with medium screw base sockets must be packaged with screw-based lamps to fill all of the sockets, and these lamps must either meet the ''ENERGY STAR Program Requirements for Compact Fluorescent Lamps, version 3.0,'' or use light sources other than CFLs that have at least equivalent efficacy. And new subsection 325(ff)(3) of EPCA (42 U.S.C. 6295(ff)(3)) requires that ceiling fan light kits which have pin-based sockets for fluorescent lamps manufactured on, or after, January 1, 2007, must be packaged with lamps to fill all of the sockets, and that these lamps must meet the ''ENERGY STAR Program Requirements for Residential Light Fixtures, version 4.0.''

For ceiling fan light kits with sockets for screw-base lamps, DOE is proposing to adopt as its test procedure the test methods in version 3.0 of the ENERGY STAR specifications for CFLs. Obviously, this satisfies the requirement that the test procedure be ''based on'' version 3.0. Also, the Department believes these test methods provide a sound basis for determining the efficacy of CFLs and compliance with the standards, which therefore satisfies the requirements of section 323(b)(3) of EPCA. (42 U.S.C. 6393(b)(3))

With regard to ceiling fan light kits with pin-based sockets for fluorescent lamps, EPCA specified that DOE must base its test procedure on version 3.2 of the ENERGY STAR specifications for RLFs, but that these lamps must meet the standards in version 4.0 of these specifications. (42 U.S.C. 6293(b)(16)(A)(i) and 6295(ff)(3)(A)) Most of the provisions, and the overall approach, are the same in the test methods contained in versions 3.2 and 4.0. Version 4.0, however, adds several provisions that make the test procedure more complete (e.g., a new electronic ballast requirement that reduces the number of permitted pin-based configurations, and improves quality and efficiency). Version 4.0 is based on the test procedure in version 3.2, and DOE believes it provides a sound basis for determining compliance with the standards, which therefore satisfies the requirements of section 323(b)(3) of EPCA (42 U.S.C. 6293(b)(3). For all of these reasons, the Department proposes to incorporate by reference the test methods in the ''ENERGY STAR Program Requirements for Residential Light Fixtures,'' version 4.0, to measure the efficacy of pin-based fluorescent lamps that are packaged with ceiling fan light kits.

The Department notes that, where version 4.0 of the RLF test procedure refers to measurement of efficacy of these lamps, it requires determination of the system efficacy for the lamp/ballast combination in lumens per watt (LPW), as seen in Tables 1 and 2A of the test procedure. Thus, the lamp must be tested when it is plugged into a fixture that contains the appropriate ballast. By contrast, this is not a concern in testing medium screw base CFLs, because the ballast for such lamp is built into the lamp.

Finally, section 135(c)(4) of EPACT 2005 amends section 325 of EPCA (42 U.S.C. 6295) by adding new subsection (ff)(4), which directs DOE to ''consider and issue requirements'' for any ceiling fan light kits other than those with medium screw base or pin-based sockets, ''including candelabra screw base sockets.'' The statute has two default requirements: 1) these ceiling fan light kits shall not be capable of operating with lamps that total more than 190 watts; and 2) the ceiling fan light kits must be packaged with lamps whose total wattage does not exceed 190 watts. For the latter packaging requirement, a limit on the total wattage of lamps packaged with a ceiling fan light kit, no test procedure is required. A manufacturer would simply ensure that there be sufficient lamps packaged with the ceiling fan light kit to fill any and all sockets in the fixture and the total wattage of those lamps would not exceed 190 watts. In the former requirement, the statute requires that these kits not be capable of operating with lamps that total more than 190 watts. To satisfy this requirement, the Department considered two approaches.

One approach would be for the Department to interpret the statutory requirement of ''not be capable of operating with lamps that total more than 190 watts'' as a design requirement, similar to features required by EPACT 2005 for ceiling fans (e.g., variable fan speed control and separate controls for fan and lights). Under this approach, there would be no test procedure required by the Department. However, manufacturers of these ceiling fan light kits would be required to incorporate some measure such as a fuse, circuit breaker or current-limiting device to ensure the light kit was not capable of operating with a lamp or lamps totaling more than 190 watts.

The alternative approach would be for the Department to adopt a test procedure that would measure the power consumption of the ceiling fan light kit. Such a test procedure would determine if the ceiling fan light kit were capable of operating with a lamp or lamps totaling more than 190 watts. DOE believes there are likely designs where it would not be apparent that the product meets the standards and that it would be necessary to test the light kit. Therefore, DOE is proposing a test procedure that incorporates by reference selected provisions from the ''IESNA Approved Method for Electrical and Photometric Measurements of General Service Incandescent Filament Lamps,'' LM–45–00, for lamps whose total wattage exceeds 190 watts. The sections of LM–45–00 being proposed for incorporation by reference are section 1.2, ''Nomenclature and Definitions,'' section 3.0, ''Power Source Characteristics'' (for AC power only),

section 4.0, ''Circuits'' (for AC power only), and section 7.0, ''Electrical Instrumentation.'' In the testing configuration setup depicted in figure 1(b) of section 4.0, the Department proposes to replace the lamp (L) by the ceiling fan light kit being tested. In this proposed test method, lamps totaling more than 190 watts are installed into the ceiling fan light kit to determine whether it consumes more than 190 watts as described in Appendix U to Subpart B of 10 CFR Part 430.

The Department requests comment on the proposed approach of interpreting the 190-watt requirement as an energy consumption standard, and requiring manufacturers to test their products using the test procedure incorporated by reference in this notice for ceiling fan light kits with sockets for lamps with bases other than medium screw-base sockets and pin-based sockets for lamps packaged with ceiling fan light kits.

B. Dehumidifiers

Section 135(b)(1) of EPACT 2005 amends section 323(b) of EPCA (42 U.S.C. 6293(b)) to add subsection (b)(13) for dehumidifiers. New subsection 323(b)(13) (42 U.S.C. 6293(b)(13)) directs the Secretary to prescribe test procedures for dehumidifiers based on the test criteria in the ''ENERGY STAR Program Requirements for Dehumidifiers,'' as in effect on August 8, 2005.[3] The DOE proposes to incorporate by reference into 10 CFR Part 430 test criteria used under the ''ENERGY STAR Program Requirements for Dehumidifiers,'' as in effect on August 8, 2005, which references the American National Standards Institute (ANSI)/Association of Home Appliance Manufacturers (AHAM) Standard DH–1–2003, ''Dehumidifiers,'' for energy consumption measurements during capacity-rating tests and the Canadian Standards Association (CAN)/(CSA) Standard C749–1994, ''Performance of Dehumidifiers,'' for energy factor calculations. In addition, section 135(c)(4) of EPACT 2005 amends section 325 of EPCA (42 U.S.C. 6295) by adding new subsection (cc) which prescribes energy conservation standards, consisting of minimum energy factors, for dehumidifiers, manufactured on, or after, October 1, 2007.

ANSI/AHAM DH–1–2003 provides definitions of terms, measurement tolerances, and testing procedures to measure the ability of a dehumidifier to remove moisture from its surrounding atmosphere in pints of water per day and liters of water consumed per kilowatt hour (L/kWh). This information is needed to determine the Energy Factor of a dehumidifier as calculated in accordance with section 4.2, ''Standard Rating of Energy Factor,'' of CAN/CSA–C749–1994. Hence, these test procedures provide a sound means for determining compliance with the standards in section 325(cc) of EPCA, as amended (42 U.S.C. 6295(cc)). The Department also concludes that they satisfy the requirements of section 323(b)(3) of EPCA. (42 U.S.C. 6293(b)(3))

C. Medium Base Compact Fluorescent Lamps

Section 135(b)(1) of EPACT 2005 amends section 323(b) of EPCA (42 U.S.C. 6293(b)) to add subsections (b)(12)(A) through (C), for ''medium base'' CFLs. (These CFLs are also commonly referred to as ''screw base'' CFLs.) The new subsection 323(b)(12)(A) of EPCA (42 U.S.C. 6293(b)(12)(A)) requires test procedures for medium base CFLs to be based on the August 9, 2001, version of the ENERGY STAR program requirements for CFLs, (the ''August 9 version'') which became effective October 1, 2001. Correspondingly, section 135(c)(4) of EPACT 2005 adds new subsection (bb)(1) to section 325 of EPCA to prescribe standards for CFLs, requiring that they meet the requirements in the August 9 version for minimum initial efficiency, lumen maintenance at 1000 hours, lumen maintenance at 40 percent of rated life, rapid cycle stress, and lamp life. (42 U.S.C. 6295(bb)(1)) Furthermore, new subsection 323(b)(12)(B) of EPCA specifically requires that medium base CFLs be tested for all of these parameters.[4] (42 U.S.C. 6293(b)(12)(B))

Effective January 1, 2004, however, the Department replaced the August 9 version with the ''ENERGY STAR Program Requirements for CFLs,'' version 3.0. The standards for CFLs remained unchanged, as did the method for testing a unit of a lamp. But version 3.0 increased to ten (from five in the August 9 version) the minimum number of units of each model that had to be tested to determine the efficacy of that model. This change means that the efficacy ratings resulting from testing would be more accurate, although obviously it also increases the test burden on manufacturers.

The Department believes that the test methods in both the August 9 version and version 3.0 meet EPCA's criteria for test procedures for CFLs. Obviously DOE adoption of the August 9 version would satisfy the requirement that the test procedures for CFLs ''be based on'' that version. (42 U.S.C. 6293(b)(12)(A)) Adoption of version 3.0 would also satisfy that requirement, given its similarity to the August 9 version. In addition, although version 3.0 is both better at measuring efficiency and more burdensome, the Department has examined both versions and believes that both are ''reasonably designed to * * * measure energy efficiency * * * and [are] not unduly burdensome to conduct,'' as required by 42 U.S.C. 6293(b)(3).

Because new subsection 323(b)(12)(A) of EPCA (42 U.S.C. 6293(b)(12)(A)) specifically identifies the test methods under the August 9 version as the ones which the test procedure for medium base CFLs ''shall be based,'' the Department is proposing today to incorporate into 10 CFR Part 430 the ''ENERGY STAR Program Requirements for CFLs,'' August 9, 2001, to measure minimum initial efficacy, lumen maintenance at 1000 hours, and 40 percent of rated life, rapid cycle stress, and lamp life. However, as indicated above, EPCA requires that the test procedure for testing CFLs in ceiling fan light kits with screw based sockets be based on version 3.0 (42 U.S.C. 6293(16)(A)(ii)), and DOE is proposing to adopt version 3.0 as the test procedure for these kits. If DOE were to adopt both this proposal and the proposal to require use of the August 9 version for testing CFLs, its regulations would incorporate two different testing regimens for testing the same product to determine whether it meets a particular efficacy standard. The Department believes that this could cause confusion and be unduly burdensome to manufacturers. In addition, because, as noted above, version 3.0 would produce more accurate results, DOE finds it preferable to the August 9 version. For these reasons, the Department is proposing adoption of provisions from version 3.0 instead of the August 9 version, and requests comments on whether the test procedures for medium base CFLs should consist of the test methods in the ''ENERGY STAR Program Requirements for CFLs,'' version 3.0.

Finally, two of the five performance requirements in EPCA's standards for CFLs concern ''lumen maintenance.'' (42 U.S.C. 6295(bb)(1)) However, in examining the ENERGY STAR program requirements for CFLs, August 9, 2001,

[3] The ENERGY STAR Program Requirements for Dehumidifiers went into effect on January 1, 2001.

[4] As noted above, Section 135(b)(1) of EPACT 2005 added subsections (b)(12)(A)–(C) for medium base CFL's. Subsection (b)(12)(B) erroneously references section 325(cc) as containing the regulated parameters for these CFL's. Instead, section 325(cc) contains standards for ''Dehumidifiers.''

the Department noted an apparent inconsistency in language regarding this term. Specifically, the table in the August 9 version that delineates ''Photometric Performance Requirements'' includes ''lumen maintenance'' among the specified properties for CFLs. In contrast, the table in the August 9 version that cites the ''Referenced Standards/Procedures,'' (i.e., the test procedures, for measuring the specified performance properties of CFLs makes no reference to testing for ''lumen maintenance.'') Rather, this table cites procedures for measuring ''lumen depreciation.'' The Department interprets these tables as using the terms ''lumen maintenance'' and ''lumen depreciation'' synonymously. To ensure clarity on this point, today's rule defines ''lumen depreciation'' as having the same meaning as ''lumen maintenance'' in the test procedure for CFLs. The Department solicits stakeholder comments about whether ''lumen maintenance'' and ''lumen depreciation'' may be taken as synonymous.

D. Torchieres

EPACT 2005 neither prescribes, nor directs DOE to develop, a test procedure for torchieres. However, section 135(c)(4) of EPACT 2005 amends section 325 of EPCA to add subsection (x) for torchieres, which establishes that torchieres manufactured on or after January 1, 2006, shall ''consume not more than 190 watts of power'' and shall ''not be capable of operating with lamps that total more than 190 watts.'' (42 U.S.C. 6295(x)(1) and (x)(2), respectively) In the October 2005 final rule, DOE incorporated these requirements into 10 CFR section 430.32(t) of its rules. 70 FR 60412–13.

The language of these two requirements is problematic. Read literally, they appear either to be redundant or not to make sense. The first requirement appears to limit total energy consumption by a torchiere to 190 watts, and the second appears to require that the torchiere not be able to operate with lamps that draw more than 190 watts. On the one hand, such requirements would be redundant because all or virtually all of the electricity a torchiere consumes is used to operate the lamps it contains. On the other hand, assuming for the sake of this discussion that torchieres consume more than the amount of electricity needed to operate the lamps they use—they could not consume less—it would not make sense to limit both the torchiere and the lamps it uses to consumption of the same maximum amount of electricity use (in this case 190 watts).

Another possible reading of subsections 325(x)(1) and (x)(2) is that both address electricity consumption by torchieres themselves, and require that torchieres not consume, or be capable of consuming, respectively, more than 190 watts. (42 U.S.C. 6295(x)(1) and (x)(2)) Under this reading, however, the two subsections would clearly be redundant. To produce a torchiere that would not consume 190 watts, a manufacturer would have to make sure that the fixture was not capable of doing so, and, conversely, any equipment constructed to be incapable of operating above 190 watts would not operate above that wattage.

The Department also believes that subsection 325(x)(1) can be interpreted as requiring that torchieres be packaged and sold with lamps that do not consume more than 190 watts, with subsection 325(x)(2) being interpreted strictly in accordance with its terms as requiring that torchieres not be able to operate with lamps totaling more than 190 watts. The Department believes this is the soundest interpretation of these provisions. Torchieres are always, or virtually always, sold with lamps enclosed with the product's packaging. In effect, the lamps are part of the product as manufactured and sold. Furthermore, as pointed out above, a torchiere will consume the amount of electricity drawn by the lamps it uses. Thus, the requirement that a torchiere ''consume not more than 190 watts,'' (42 U.S.C. 6295(x)(1)) which applies to the product as manufactured and then distributed in commerce by the manufacturer, can reasonably be interpreted as requiring that the torchiere be packaged with lamps totaling 190 watts or less.

Such a requirement complements the provision that torchieres ''not be capable of operating with lamps'' totaling that same wattage. (42 U.S.C. 6295(x)(2)) The norm for torchieres, as with other lighting fixtures, is that users will replace the product's lamps, often numerous times during its life. In conjunction with a requirement that torchieres be distributed with lamps that consume no more than 190 watts, it makes sense to require that torchieres be unable to operate with lamps totaling more than that wattage, so as to assure that consumers will not use the product at energy levels above the level contemplated in the Act. Not only does this approach make sense given the nature of the product here, but it also gives meaning to both subsections (x)(1) and (2).

Furthermore, it reflects the approach the Congress took in the only other provision of section 135(c)(4) of EPACT 2005 that contains a similar two-pronged energy conservation standard for a lighting fixture. For ceiling fan light kits that have neither medium screw base sockets nor bin-based sockets, the default standard EPACT 2005 provides that a ceiling fan light kit (1) must include lamps that total 190 watts or less and (2) shall not be capable of operating with lamps totaling more than 190 watts. (42 U.S.C. 6295(ff)(4)(c)) For these reasons, DOE intends to interpret 42 U.S.C. 6295(x) as requiring that torchieres be packaged and sold with lamps that do not consume more than 190 watts, and not be able to operate with lamps totaling more than 190 watts. Section 430.32(t)(2) of DOE's regulations already reflects the second prong of this interpretation, and in the final rule in this proceeding, the Department plans to modify section 430.32(t)(1) to reflect the first prong.

As to the second prong, the Department construes it to mean that a torchiere must be designed and manufactured in such a way that either the fixture would not function, or the component lamps when operating would not consume more than 190 watts, when lamps exceeding that wattage are installed in the fixture. To satisfy this requirement, the Department is contemplating two approaches.

One approach would be for the Department to interpret the statutory requirement of ''not be capable of operating with lamps that total more than 190 watts'' as a design requirement, similar to features required by section 135(c)(4) of EPACT 2005 for ceiling fans (e.g., variable fan speed control). Under this approach, the Department would not require a test procedure, and the Department's regulations would specify one or more features that torchieres would be required to incorporate, such as a fuse, circuit breaker or other current limiting device, so that they would either cease to operate, or would draw less than 190 watts, when the user installed a lamp or lamps totaling more than 190 watts in the unit. This approach would be consistent with EPCA's failure to mention test procedures for torchieres.

The alternative approach would be for the Department to adopt a test procedure that would measure the power consumption of a torchiere. Such a test procedure would determine if the torchiere was capable of operating with a lamp or lamps totaling more than 190 watts. A test method to this effect is proposed in Appendix AA to Subpart B of Part 430, Uniform Test Method for

Measuring the Energy Consumption of Torchieres. This proposed test method adapts and incorporates by reference selected provisions from the ''IESNA Approved Method for Electrical and Photometric Measurements of General Service Incandescent Filament Lamps,'' LM–45–00, along with lamps whose total wattage exceed 190 watts. The sections of LM–45–00 being proposed for incorporation by reference are section 1.2, ''Nomenclature and Definitions,'' section 3.0, ''Power Source Characteristics'' (for AC power only), section 4.0, ''Circuits'' (for AC power only), and section 7.0, ''Electrical Instrumentation.'' In the testing configuration setup depicted in figure 1(b) of section 4.0, the Department proposes to replace the lamp (L) by the torchiere being tested. In this proposed test method, a lamp or lamps totaling more than 190 watts are installed into the torchiere to determine whether it consumes more than 190 watts.

The Department requests comment on the proposed approach of interpreting the 190 watt requirement as an energy consumption standard and requiring manufacturers to test their products using the test procedure incorporated by reference in this notice for torchieres.

E. Unit Heaters

Section 135(c)(4) of EPACT 2005 amends section 325 of EPCA to add subsection (aa) (42 U.S.C. 6295(aa)), which requires that unit heaters manufactured on or after August 8, 2008, be equipped with an intermittent ignition device, and have power venting or an automatic flue damper. The Department incorporated these design standards into 10 CFR 430 in the October 2005 final rule. 70 FR 60407. Test procedures under EPCA must be designed to measure ''energy efficiency, energy use, * * * or estimated annual operating cost.'' (42 U.S.C. 6314(a)(2)) Test procedures are not required for determining compliance with design standards (42 U.S.C. 6295(s)). Since EPACT 2005 promulgated design standard for unit heaters, the Department is not proposing test procedures for this equipment.

However, the Department is proposing definitions for the terms ''intermittent ignition device,'' ''power venting,'' ''automatic flue damper,'' and ''fan-type heater'' as they relate to unit heaters. The last of these terms appears in the definition of ''unit heater'' that appears in EPCA (EPACT 2005, section 135(a)(3), and 42 U.S.C. 6291(45)) and the October 2005 final rule, 70 FR 60407 and 10 CFR 431.242. The other terms appear in the unit heater standards adopted in EPCA (EPACT 2005, section 135(c)(4) and 42 U.S.C. 6295(aa)) and the October 2005 final rule, 70 FR 60407 and 10 CFR 431.246. The Department's adoption of these definitions would clarify coverage and content of the standards for unit heaters. The proposed definitions incorporate the content of definitions from industry consensus standards, with slight modifications that reflect their application to unit heaters. For example, the proposed definition of ''fan-type heater'' is derived from the definitions of that term in ANSI/ASHRAE Standard 103–1993, and the proposed definition of ''intermittent ignition device'' is derived from the definition of the term in ANSI Standard Z21.47–2001.[5]

F. Automatic Commercial Ice Makers

Section 136(f)(1)(B) of EPACT 2005 amends section 343 of EPCA to add subsection (a)(7)(A) (42 U.S.C. 6314(a)(7)(A)), which directs that the test procedures for automatic commercial ice makers ''shall be the test procedures specified in the Air-Conditioning and Refrigeration Institute [ARI] Standard 810–2003, as in effect on January 1, 2005.'' The title of this Standard is ''Performance Rating of Automatic Commercial Ice Makers.''

ARI Standard 810–2003 provides definitions of terms, test requirements, and rating requirements. In particular, section 4, ''Test Requirements,'' of ARI Standard 810–2003 references the performance tests in the American Society of Heating, Refrigerating and Air-Conditioning Engineers (ASHRAE) Standard 29, ''Methods of Testing Automatic Ice Makers,'' without indicating which version of ASHRAE Standard 29. The Department construes ARI Standard 810–2003 as providing for use of the most current version of ASHRAE Standard 29, which at present is the American National Standards Institute (ANSI)/ASHRAE Standard 29–1988 (Reaffirmed 2005). Also, section 4.1 of ARI Standard 810–2003 provides an exception to the test set-up requirements of ASHRAE Standard 29. It states that the test unit must be set up according to the manufacturer's instructions to the user for setting up the unit for normal operation, and without any adjustments that might affect ice capacity, energy usage, or water usage. The Department believes this provision provides some assurance that all the testing and rating parameters are measured and reported in complete conformity with how the unit is intended to operate, that the unit's efficiency rating will accurately reflect the efficiency the user would experience, and that compliance with applicable standards will be determined under normal operating conditions.

ARI Standard 810–2003 cites ASHRAE Standard 29 as the source of procedures for measuring energy consumption rate and condenser water use rate. The Department has examined these procedures as set forth in ANSI/ASHRAE Standard 29–1988(RA2005) and believes they are not unduly burdensome to conduct, and would produce results that accurately reflect the efficiency of ice makers, except that the test procedure for calculating energy consumption rate in section 8.3 of this Standard is problematic. Specifically, the calculation for energy consumption rate directs that the energy consumed while cycling an ice maker through a minimum of three cycles be divided by the mass (weight) of ice measured in determining ice density (normalized to 100 pounds of ice). However, these specifications can result in an error because the ANSI/ASHRAE procedure for measuring the ice density does not clearly state if the total mass of all the ice produced during the three cycles must be used. That is, the test procedure may permit testing personnel, in performing the density determination, to discard some of the ice produced during the three or more cycles. If some of the ice is discarded, the measured energy consumption would be for a larger amount of ice than that included in the determination of the energy consumption rate, thus overstating the rate.

To correct this defect in the procedure for calculating the energy consumption rate, DOE proposes to require explicitly that the rate be determined using the total amount of ice produced during the cycles in which energy consumption is measured. Specifically, this proposed test procedure provides in 10 CFR 431.134 that the energy consumption rate normalized to 100 pounds (100 lbs) of ice be determined as follows:

[5] The definition of fan-type heater is the definition in ANSI/ASHRAE 103–1993 without modification. The definition of intermittent ignition device is derived from the definition in ANSI.Z21.47–2001. The last sentence of the definition as it reads in ANSI.Z21.47–2001 is not incorporated by reference because it details characteristics of the ignition source and is not needed for clarifying the test procedure. The definition of power venting was derived from DOE's Priority Setting for the 2003 fiscal year. The definition does not include the characteristics and advantages of using of the fan for venting purposes.

$$\text{Energy Consumption Rate (per 100 lbs ice)} = \frac{\text{Energy Consumed During Testing (kWh)}}{\text{Total Mass of Ice Collected During Testing (lbs)}} \times 100\%$$

The Department believes that this approach either eliminates an unintended ambiguity in ARI Standard 810–2003, or represents, at most, a relatively minor modification of the methodology in that Standard. Under either view, without the modification, the test procedure would not ''be reasonably designed to produce test results which reflect [the] energy efficiency'' of this equipment, as required by section 343(a)(2) of EPCA. (42 U.S.C. 6314(a)(2)) Therefore, the Department believes, given this latter statutory requirement, that it is authorized to make this modification, even if the modification is viewed as an alteration of ARI Standard 810–2003. This approach gives meaning to both the statutory provisions in EPCA. (42 U.S.C. 6341(a)(7)(A), 42 U.S.C. 6314(a)(2)) It is not barred by the EPCA provision which states that the test procedures for automatic commercial ice makers ''shall be'' those specified in the ARI Standard. (42 U.S.C. 6314(a)(7)(A), 42 U.S.C. 6314(a)(2))

The Department requests comments about whether this proposed requirement for collecting and measuring the mass of ice produced during the energy consumption test corrects the problem found in ANSI/ASHRAE Standard 29–1988 (RA 2005).

The Department concludes that ARI Standard 810–2003, together with the provisions it incorporates from ASHRAE Standard 29–1988 (RA 2005), and with the above correction, provide a method for measuring the energy use and water use at the harvest rate levels specified in section 342(d) of EPCA (42 U.S.C. 6313(d)), and for determining compliance with the standard levels in that section. Furthermore, DOE adoption of these provisions would satisfy both the requirement that the test procedures for automatic commercial ice makers ''shall be'' the test procedures in ARI Standard 810–2003 (42 U.S.C. 6314(a)(7)(A)) and the general requirements for test procedures in 42 U.S.C. 6314(a)(2).

Finally, section 136(h)(3) of EPACT 2005 amends section 345 of EPCA (42 U.S.C. 6316) to add subsection (f)(4) directing the Secretary to ''monitor whether manufacturers are reducing harvest rates below tested values for the purpose of bringing non-complying equipment into compliance,'' and authorizing the Secretary to take steps to minimize manipulation if the Secretary determines ''that there has been a substantial amount of manipulation with respect to harvest rates'' of commercial ice makers. The Department will monitor commercial ice maker harvest rates to determine if such manipulation is occurring.

G. Commercial Prerinse Spray Valves

Section 135(b)(1) of EPACT 2005 amends section 323(b) of EPCA (42 U.S.C. 6293(b)) to add subsection (14), which states that test procedures for measuring the flow rate for commercial prerinse spray valves ''shall be based on [the] American Society for Testing and Materials [ASTM] Standard F2324, entitled 'Standard Test Method for Pre-Rinse Spray Valves.' '' Section 135(c)(4) amends EPCA to require that commercial prerinse spray valves manufactured on or after January 1, 2006, have a flow rate of 1.6 gallons per minute or less. (42 U.S.C. 6295(dd))

The reference to ASTM Standard F2324 raises two threshold matters. First, DOE presumes that Congress intended in the EPACT provision directing DOE to base its test procedure on this Standard, to require DOE to use the most recent version, ASTM Standard F2324–03. Second, ASTM Standard F2324–03 covers water consumption flow rate and cleanability of prerinse spray valves. However, new section 323(b)(14) of EPCA (42 U.S.C. 6293(b)(14) contemplates only a test procedure that measures flow rate for this product, and the new standard at 42 U.S.C. 6296 (dd) concerns only flow rate. Therefore, the Department has not considered adoption of the cleanability provisions of ASTM Standard F2324–03. Furthermore, the Department has examined ASTM Standard F2324–03 and believes it provides a sound basis for determining the flow rate and compliance with the standards for prerinse spray valves, which therefore satisfies the requirements of section 323(b)(3) of EPCA. (42 U.S.C. 6293(b)(3))

For all of these reasons, DOE proposes to incorporate by reference under Subpart O of 10 CFR Part 431, Commercial Prerinse Spray Valves, the procedures in ASTM Standard F2324–03 that are pertinent to measuring the water consumption flow rate of prerinse spray valves.

H. Illuminated Exit Signs

Section 135(b)(1) of EPACT 2005 amends section 323(b) of EPCA (42 U.S.C. 6293(b)) to add subsection (9), which provides that test procedures for illuminated exit signs ''shall be based on the test method'' contained in version 2.0 of the EPA's ENERGY STAR program requirements for illuminated exit signs. Furthermore, section 135(c)(4) of EPACT 2005 added a new subsection (w) to 325 of EPCA, which requires illuminated exit signs manufactured on, or after January 1, 2006, meet version 2.0's performance requirements; under version 2.0 such signs must have an input power demand of five watts or less per face. See 70 FR 60417; 10 CFR 431.206. EPA updated the ''ENERGY STAR Program Requirements for Exit Signs'' and published version 3.0, effective August 1, 2004. The procedure for measuring input power is essentially the same in both versions, 2.0 and 3.0.

In examining the test procedures in the two versions, the Department found that in both, the provisions for measuring input power are not explicit about the length of time for performing the measurement. The Department believes that if manufacturers perform the measurement using different durations from different models, the resulting measurements for these different models would likely lack comparability. Thus, to reduce the possibility of such an outcome and to clarify the test procedure, DOE proposes to include a requirement in the test procedure that the time duration of the test shall be sufficient to measure power consumption with a tolerance of ±1 percent. (10 CFR 431.204) The Department requests comments about whether its test procedure for illuminated exit signs should incorporate this time duration requirement.

Based on its examination of both versions 2.0 and 3.0, DOE believes that each, with this proposed modification, meets EPCA's criteria for test procedures for illuminated exit signs. Obviously, DOE adoption of version 2.0 would satisfy the requirement that the test procedures for such signs ''be based on'' that version. (42 U.S.C. 6293(b)(9)) Adoption of version 3.0 would also satisfy that requirement, given its similarity to version 2.0. In addition, DOE believes that both versions, with the addition of a time duration requirement, would be ''reasonably designed to * * * [measure] * * * energy use * * * and [are] not unduly burdensome to conduct,'' as required by 42 U.S.C. 6293(b)(3). See also, 42 U.S.C. 6314(a)(2).

Although new subsection 323(b)(9) of EPCA (42 U.S.C. 6293(b)(9)), specifically identifies the test method in version 2.0 as the version on which the test procedure for illuminated exits signs ''shall be based,'' the Department proposes to incorporate by reference into 10 CFR Part 431, the ''ENERGY STAR Program Requirements for Exit Signs,'' version 3.0, effective August 1, 2004 because the test methods in versions 2.0 and 3.0 are essentially the same and version 3.0 is the most recent iteration of that test procedure.

I. Traffic Signal Modules and Pedestrian Modules

Section 135(b)(1) of EPACT 2005 amends section 323(b) of EPCA (42 U.S.C. 6293(b)) to add subsection (11), which states that test procedures for traffic signal modules and pedestrian modules shall be based on the test method used under the ''ENERGY STAR program'' for traffic signal modules, as in effect on August 8, 2005. Section 4 of the ENERGY STAR specification in effect at that time, the ''ENERGY STAR Program Requirements for Traffic Signals,'' version 1.1, prescribes use of the test methods from the Institute for Transportation Engineers (ITE), ''Vehicle Traffic Control Signal Heads (VTCSH),'' Part 2, 1985, section 6.4.2, ''Maintained Minimum Luminous Intensity.''

In addition, pursuant to Section 135(c)(4) of EPACT 2005, new subsection 325(z) of EPCA (42 U.S.C. 6295(z)) now requires that traffic signal modules and pedestrian modules manufactured on or after January 1, 2006, meet the performance requirements specified in the ENERGY STAR program requirements for traffic signals, version 1.1, which preclude the maximum wattage and nominal wattage of these modules from exceeding certain specified levels. See 70 FR 60417; 10 CFR section 431.226(a).

However, neither EPCA nor ENERGY STAR nor section 6.4.2 of VTCSH Part 2 referenced in the ENERGY STAR test procedure, provides a definition of the energy consumption of traffic signal modules or pedestrian modules (i.e., nominal or maximum wattage). The Department proposes to clarify both the standards and test conditions for these products by adopting the following definitions of nominal wattage and maximum wattage into § 431.222:

- Nominal wattage means the power consumed by the module when it is operated within a chamber at a temperature of 25 °C after the signal has been operated for 60 minutes.
- Maximum wattage means the power consumed by the module after being operated for 60 minutes while mounted in a temperature testing chamber so that the lensed portion of the module is outside the chamber, all portions of the module behind the lens are within the chamber at a temperature of 74 °C, and the air temperature in front of the lens is maintained at a minimum of 49 °C.

The Department developed these definitions by drawing on language in the VTCSH test procedure and from consultations with ITE. The Department believes the definitions are consistent with the test procedure, and with the standards EPCA now prescribes for traffic signal and pedestrian modules, which were developed based on application of the test procedure. Thus, DOE believes the proposed definitions reflect the intent of ITE and the ENERGY STAR program in developing the test procedures and standards. The Department invites comment on these definitions.

Sections 6.4.2.1 and 6.4.2.2 of VTCSH Part 2 may be viewed as leaving gaps in the method for measuring nominal and maximum wattages. Specifically, they direct the user to measure the nominal and maximum wattage without addressing the accuracy of the wattage sensor nor the time duration for measuring power consumption during conduct of the test. The Department believes ITE may not have specified the details of how to measure these values since they generally accepted procedures which a test laboratory would be familiar with and would affect the results. However, the Department invites comment on this view and whether DOE should specify detailed test methods for these points. If DOE finds it necessary, the Department will develop, and incorporate into the test procedure, requirements on these two points is a separate proceeding from this rulemaking.

As noted above, EPCA provides that the test procedures for both traffic signal and pedestrian modules must be based on the ENERGY STAR specification for traffic signal modules, (i.e., 6.4.2 of VTCSH Part 2). VTCSH Part 2 does not mention or, by its terms, apply to pedestrian modules. However, upon careful consideration and review of VTCSH Part 2, the Department believes the test procedures in VTCSH Part 2 for determining maximum and nominal wattages of traffic signal modules are equally applicable to testing pedestrian modules. Thus, the Department proposes to apply the VTCSH Part 2 test procedures for determining maximum and nominal wattage of traffic signal modules to pedestrian modules, without modification except for the type of module being tested. The Department requests comments about the technical feasibility of this proposal.

DOE is proposing to incorporate by reference the test methods for measuring the maximum and nominal wattages as contained in the test specifications in section 4 of the ''ENERGY STAR Program Requirements for Traffic Signals,'' version 1.1, and section 6.4.2 of VTCSH Part 2 (1985). DOE is aware that ITE recently updated the VTCSH to the June 27, 2005, version, referred to as VTCSH (2005). DOE is not proposing to adopt VTSCH Part 2 (2005) because it extended coverage to products not covered by EPACT 2005, uses a format that is not conducive to incorporation in the DOE test procedure, and added a number of testing requirements DOE does not find necessary to meet the requirements of EPACT 2005. In the 2005 update, for example, ITE re-organized the document, splitting apart and moving some of the provisions from previous section 6.4.2, ''Maintained Minimum Luminous Intensity'' of VTCSH Part 2 (1985) into section 6.4.2, ''Conditioning of Modules'' and section 6.4.4, ''Photometric and Colorimetric Tests.'' The Department found the specific testing requirements for measuring the nominal wattage and the maximum wattage of the module to be in sections 6.4.4.1, 6.4.4.4, and 6.4.4.5 of VTCSH (2005). Specifically, the Department is only interested in the testing requirements in sections 6.4.4.1, 6.4.4.4, and 6.4.4.5 for red and green signal modules. In addition, VTCSH (2005) specified that the test should be performed with modules energized at nominal operating voltage unless the test requirements explicitly state otherwise. Since the requirements for nominal and maximum wattage measurements found in section 6.4.4 of VTCSH (2005) are more detailed and increase testing burden, the Department is not adopting the more stringent requirements in VTCSH (2005). The Department also found that the number of modules tested for the photometric and colorimetric tests in VTCSH (2005) was three, instead of the six required by VTCSH (1985), and that the three units be subjected to environmental tests. However, the Department is only concerned with testing for nominal wattage and maximum wattage and is not requiring manufacturers to conduct the environmental tests on their modules. Consequently, the Department is proposing to adopt the VTCSH (1985) as specified by ENERGY STAR.

In sum, the Department has examined the ENERGY STAR specifications for traffic signals in effect on August 8, 2005, and the VTCSH (1985) testing procedures it references and believes,

with the addition of definitions of maximum wattage and nominal wattage and of provisions addressing the accuracy of the wattage sensor and the duration of the test, the test methods in these documents provide a sound basis for measuring the maximum and nominal wattages, and determining compliance with the applicable standards, for traffic signal and pedestrian modules. Therefore, DOE adoption of these test methods would satisfy the requirements of section 323(b)(3) of EPCA (42 U.S.C. 6293(b)(3). Adoption of these test methods would also satisfy EPCA's requirement that the test procedures for traffic signal modules and pedestrian modules be based on the ENERGY STAR specification in effect on August 8, 2005. For these reasons, DOE is proposing to incorporate by reference the test methods for measuring the maximum and nominal wattages as contained in the test specifications in section 4 of the ''ENERGY STAR Program Requirements for Traffic Signals,'' version 1.1, and section 6.4.2 of VTCSH Part 2 (1985).

J. Refrigerated Bottled or Canned Beverage Vending Machines

Section 135(a)(3) of EPACT 2005 amends section 321 of EPCA to add subsection 321(40) (42 U.S.C. 6291(40)), which defines the term ''refrigerated bottled or canned beverage vending machine'' as a ''commercial refrigerator that cools bottled or canned beverages and dispenses the bottled or canned beverages on payment.'' Section 135(c)(4) of EPACT 2005 amends section 325 of EPCA to add subsection 325(v)(2) (42 U.S.C. 6295(v)(2)), which directs the Secretary to prescribe, by rule, energy conservation standards for this equipment. Further, section 135(b)(1) of EPACT 2005 amends section 323(b) of EPCA by adding subsection 323(b)(15) (42 U.S.C. 6293(b)(15)), which states that test procedures for refrigerated bottled or canned beverage vending machines ''shall be based on [ANSI/ASHRAE] Standard 32.1–2004, entitled 'Methods of Testing for Rating Vending Machines for Bottled, Canned or Other Sealed Beverages.' '' Also pursuant to section 135(b)(2) of EPACT 2005, new subsection 323(f) of EPCA , 42 U.S.C. 6293 (f)(1), directs the Secretary to prescribe testing requirements for refrigerated bottled or canned beverage vending machines no later than two years after the enactment of EPACT 2005, that is August 8 , 2007. (42 U.S.C. 6293(f)(1)) This section also directs DOE to base such testing requirements on existing industry test procedures, to the maximum extent practicable. (42 U.S.C. 6292(f)(2))

Section 6.2 of ANSI/ASHRAE Standard 32.1–2004, ''Methods of Testing for Rating Vending Machines for Bottled, Canned or Other Sealed Beverages,'' on ''Voltage and Frequency,'' allows for testing ''vending machines with dual nameplate voltages at both voltages or at the lower of the two voltages.'' The Department's understanding is that test results for a given piece of dual-voltage equipment would not be affected by the voltage during testing Consequently, the Department proposes to test beverage vending machines at the lower voltage, as allowed by the standard, to characterize the energy consumption, as EPACT 2005 intended. The Department requests comments on this proposal.

The Department has examined ANSI/ASHRAE Standard 32.1–2004 and believes it provides sound methods for testing the energy efficiency of a refrigerated bottled or canned beverage vending machine, and that it satisfies the requirements of section 323(b)(13) of EPCA (42 U.S.C. 6293(b)(3)). Therefore, the Department proposes to incorporate this test procedure by reference into 10 CFR Part 431. After it adopts a test procedure for refrigerated bottled or canned beverage vending machines, the Department intends to establish by rule energy conservation standards for such equipment, as directed by section 325(v) of EPCA.

K. Commercial Package Air-Conditioning and Heating Equipment

Section 136(f)(1)(A) of EPACT 2005 amends section 343(a)(4)(A) and (B) (42 U.S.C. 6314(a)(4)(A) and (B)) to require test procedures for air-cooled package air conditioning and heating equipment rated at or above 240,000 and below 760,000 British thermal units per hour (Btu/h) cooling capacity (defined as ''very large'' equipment under section 136(a)(3) of EPACT 2005, 42 U.S.C. 6311(8)(D)). The amendment provides that the test procedure for such equipment shall be the ''generally accepted industry testing procedures or rating procedures developed or recognized by the Air-Conditioning and Refrigeration Institute or by the American Society of Heating, Refrigerating and Air-Conditioning Engineers, as referenced in ASHRAE/IES Standard 90.1 and in effect on June 30, 1992.'' (42 U.S.C. 6314(a)(4)(A)) It also provides in essence that, DOE must adopt any amendment to such test procedure unless it determines that the amended test procedure would fail to meet EPCA's general requirements for test procedures. (42 U.S.C. 6314(a)(4)(B))

The test procedures in effect on June 30, 1992, for very large commercial package air conditioning and heating equipment were the ARI Standard 340–1986, ''Commercial and Industrial Unitary Heat Pump Equipment,'' and ARI Standard 360–1986, ''Commercial and Industrial Unitary Air-Conditioning Equipment.'' ARI subsequently replaced these test standards with ARI Standard 340/360–93, ''Commercial and Industrial Unitary Air-Conditioning and Heat Pump Equipment,'' and then ARI Standard 340/360–2000, ''Commercial and Industrial Unitary Air-Conditioning and Heat Pump Equipment.'' The Department understands that neither of these new versions of ARI Standard 340/360 altered the efficiency test methods or calculation procedures that were in ARI Standards 340 and 360 as in effect on June 30, 1992. Nor did the new versions alter the measured efficiencies for the equipment being tested.

In an October 21, 2004, direct final rule, ''Test Procedures and Efficiency Standards for Commercial Air Conditioners and Heat Pumps,'' the Department adopted test procedures for small commercial package air-conditioning and heating equipment (cooling capacities less than 135,000 Btu/h), and for large commercial package air conditioning and heating equipment (cooling capacities at or above 135,000 Btu/h and less than 240,000 Btu/h) into section 431.96. 69 FR 61962. Under that rule, the Department adopted ARI Standard 340/360–2000, the most recent ARI test procedure at the time, for commercial package air-conditioning and heating equipment with cooling capacities at or above 135,000 Btu/h and less than 240,000 Btu/h. 69 FR 61971; 10 CFR 431.96. For equipment with cooling capacities at or above 65,000 Btu/h and less than 135,000 Btu/h, other than water source equipment, the Department adopted ARI Standard 340/360–2000 with four modifications (taken from ARI Standard 210/240–2003) as the applicable test procedure. 69 FR 61971–72; 10 CFR 431.96. These modifications were necessary to ensure the proper testing of certain types, or configurations, of equipment. 69 FR 61965–66. Subsequently, ARI published ARI Standard 340/360–2004, which revised ARI Standard 340/360–200 by adding the four modifications DOE had adopted, in the October 2004 direct final rule, for equipment with cooling capacities at or above 65,000 Btu/h and less than 135,000 Btu/h. ARI made no other changes. ARI Standard 340/360–

2004, ''Performance Rating of Commercial and Industrial Unitary Air-Conditioning and Heat Pump Equipment,'' is now the most current industry test procedure for all of this equipment, including very large commercial package air conditioning and heating equipment.

In accordance with 42 U.S.C. 6314(a)(4)(B), the Department proposes to incorporate ARI Standard 340/360–2004 by reference into 10 CFR Part 431 as the test procedure for very large air-cooled commercial package air conditioning and heating equipment. This would make the DOE test procedure consistent with the amended industry test procedure. Also, the new version of ARI Standard 340/360 would be more readily available to users than the prior version. And finally, DOE is aware of no basis for concluding that the new version fails to meet the general requirements for test procedures in 42 U.S.C. 6313(a)(2) and (3).

The Department also proposes to replace the references to ARI Standard 340/360–2000, as well as the modifications to the standard, with references to ARI Standard 340/360–2004 in the test procedures in 10 CFR Part 431 for all small and large commercial package air conditioning and heating equipment (cooling capacities equal to, and greater than, 65,000 Btu/h, but less than 240,000 Btu/h), except for water-source heat pumps with cooling capacities of less than 135,000 Btu/h. For the latter, the applicable test procedure is ISO Standard 13256–1 1998.

As indicated above, ARI Standard 340/360–2004 changes the previous version of ARI Standard 340/360 only by incorporating provisions in DOE's test procedures. Thus, incorporation of ARI Standard 340/360–2004 will not alter DOE's test procedure.

L. Commercial Refrigerators, Freezers, and Refrigerator-Freezers

Section 136(f)(1)(B) of EPACT 2005 amends section 343 of EPCA by adding subsection (a)(6)(A)(i) (42 U.S.C. 6314(a)(6)(A)(i)), which prescribes test procedures for commercial refrigerators, freezers, and refrigerator-freezers. New subsection 343(a)(6)(A)(ii) requires that ASHRAE Standard 117, as in effect on January 1, 2005, shall be the initial test procedure for equipment to which standards are applicable under section 342(c)(2)-(3) of EPCA (Section 136(c) of EPACT 2005, 42 U.S.C. 6313(c)(2)–(3)), (i.e., (1) commercial refrigerators, freezers, and refrigerator-freezers with a self-contained condensing unit and designed for holding temperature applications, and (2) commercial refrigerators with a self-contained condensing unit, designed for pull-down temperature applications, and with transparent doors). (42 U.S.C. 6314(a)(6)(A)(ii)) ASHRAE Standard 117–2002, ''Method of Testing Closed Refrigerators,'' was in effect on January 1, 2005. Also new subsection 343(a)(6)(E) provides that, if ASHRAE Standard 117 is amended, the Secretary must address whether to amend the test procedures for this equipment. (42 U.S.C. 6314(a)(6)(E)

ASHRAE Standard 117–2002 was recently revised and combined with ASHRAE Standard 72–1998, ''Methods of Testing Open Refrigerators,'' into ASHRAE Standard 72–2005, ''Method of Testing Commercial Refrigerators and Freezers,'' as part of the ASHRAE revision process. ASHRAE Standard 72–2005 clarifies or modifies certain door opening requirements, shelf loading requirements, definitions, and the reporting of results. Also, it improves upon the precision of its predecessor test procedures by providing exact specifications for testing conditions, testing instruments, pressure and temperature testing locations, and the timing of each measurement within the refrigeration cycle. In addition, ASHRAE Standard 72–2005 contains new requirements that improve the consistency of ambient temperature measurements.

Since ASHRAE Standard 117–2002 is the initial test procedure mandated by subsection 343(a)(6)(A)(ii) of EPCA (42 U.S.C. 6314(a)(6)(A)(ii)), and ASHRAE amended this test procedure in ASHRAE Standard 72–2005, DOE reviewed Standard 72–2005 pursuant to subsection 343(a)(6)(E)(i) (42 U.S.C. 6314(a)(6)(E)(i)). Based on the review, the Department believes no basis exists for concluding that the new standard fails to meet the general requirements for test procedures in 42 U.S.C. 6313(a)(2) and (3), and is proposing to incorporate it by reference into 10 CFR Part 431. Also, because EPCA defines refrigeration equipment compartment volumes, for purposes of standards for this equipment, in terms of ANSI/AHAM Standard HRF–1–1979, ''Association of Home Appliance Manufacturers Standard for Household Refrigerators, Combination Refrigerator-Freezers, and Household Freezers' (Section 136(c) of EPACT 2005; 42 U.S.C. 6313(c)(1)((A) and (B)), DOE is proposing to incorporate by reference into 10 CFR Part 431 this standard. Finally, the Department has included in proposed section 431.64(b)(3) of today's rule the applicable rating temperatures for this equipment prescribed under subsection 343(a)(6)(B) of EPCA (42 U.S.C. 6314(a)(6)(B)).

In addition, section 136(h)(3) of EPACT 2005 amends section 345 of EPCA (42 U.S.C. 6316) to add subsection (e)(5)(A), which requires manufacturers of the equipment covered by the standards in section 342(c)(2)–(3) of EPCA (Section 136(c) of EPACT 2005, 42 U.S.C. 6313(c)(2)–(3)) ''to certify, through an independent, nationally recognized testing or certification program, that the commercial refrigerator, freezer, or refrigerator-freezer meets the applicable standard.'' [6] Also, the Secretary is required to encourage the establishment of at least two independent testing and certification programs. (42 U.S.C. 6316 (e)(5)(B)) The Department is not proposing separate manufacturer certification reporting procedures for these commercial refrigerators, freezers, and refrigerator-freezers, although the proposed rules would allow manufacturers to have third parties, such as certification organizations, submit such reports on their behalf. But to meet the statutory requirement of certifying through an independent testing or certification program, manufacturers of this equipment would have to use such programs to develop the efficiency ratings on which they base their certification reports.

Section 136(c) of EPACT 2005 amends section 342 of EPCA by adding subsection 342(c)(4) (42 U.S.C. 6313(c)(4)), which directs the Secretary to develop standards for ice-cream freezers; commercial refrigerators, freezers, and refrigerator-freezers with a self-contained condensing unit and without doors; and commercial refrigerators, freezers, and refrigerator-freezers with a remote condensing unit. Furthermore, new section 343(a)(6) of EPCA (Section 136(f)(1)(B) of EPACT 2005, 42 U.S.C. 6314(a)(6)), directs DOE to develop test procedures for some of this equipment. It states, first, that such test procedures must either be ''generally accepted industry test procedures'' or ''developed or recognized'' by ASHRAE or ANSI (42 U.S.C. 6314(a)(6)(A)(i)), second, what the rating temperature must be for some of the equipment, (42 U.S.C. 6314(a)(6)(B)) and, third, that DOE must issue a rule, in accordance with EPCA's general test procedure requirements for commercial equipment (42 U.S.C. 6314(a)(2) and (3)), to establish the appropriate rating temperatures for the remainder of these products. (42 U.S.C.

[6] The standards applicable to this equipment were codified into section 431.66 of 10 CFR part 431 in the October 2005 final rule. 70 FR 60414.

6314(a)(6)(C)) ARI recently developed methods for testing such commercial refrigeration equipment in ARI Standard 1200–2006, ''Performance Rating of Commercial Refrigerated Display Merchandisers and Storage Cabinets.''

In general, ARI Standard 1200–2006 provides testing and rating requirements for commercial refrigerated display merchandisers and storage cabinets, both those with self-contained condensing units and those with remote condensing units. It covers commercial refrigerated display merchandisers regardless of whether they are open or closed, or for service or self-service. The ARI Standard was developed to provide guidance to the commercial refrigeration industry and allows comparison of energy consumption among remote commercial refrigerated display cases, and among self-contained commercial refrigerated display cases. The Standard provides rating conditions and testing requirements, and specifies equations for the calculation of energy consumption, volume, and total display area. The testing requirements are based on testing provisions in ASHRAE Standard 72–2005.

ARI Standard 1200–2006 also includes product-temperature rating specifications that require maintaining test-package temperatures during the tests. This is important for a valid comparative evaluation of energy consumption among products. For commercial refrigerators, freezers, and refrigerator-freezers with a self-contained condensing unit and without doors, and commercial refrigerators, freezers, and refrigerator-freezers with a remote condensing unit, the rating temperatures are based on the application in which the product is used. For low-temperature applications, the rating-temperature specification is an integrated average temperature of all test-package averages of 0 °F (±2 °F). For medium-temperature applications, the rating-temperature specification is an integrated average temperature of all test-package averages of 38.0 °F (±2 °F).

The rating temperature that ARI Standard 1200–2006 specifies for ice-cream freezers is an integrated average temperature of all test package averages of –5.0 °F (±2 °F). However, ice-cream freezers with doors, which DOE understands to constitute all or the vast majority of ice-cream freezers, were covered by standards adopted in 2002 by the California Energy Commission (CEC). Therefore, this equipment appears to be subject to the requirement that its rating temperature be the integrated average temperature of ''0 degrees F (± 2 degrees F).'' (Section 136(f)(B) of EPACT 2005, 42 U.S.C. 6314(a)(6)(B)(i)) But because ice-cream freezers typically operate at –5 F, a test procedure that uses an integrated average temperature of 0°F (±2 °F) as the rating temperature for this equipment ''would produce test results'' that fail to ''reflect [its] energy efficiency,'' and DOE adoption of such a test procedure would violate section 343(a)(2) of EPCA (42 U.S.C. 6314(a)(2)). The Department notes that the 2002 CEC standards use the integrated average temperature of 0 F (±2°F) as the rating temperature for all commercial freezers with doors covered by the standards, except for ice-cream freezers. For ice-cream freezers, CEC uses an integrated average temperature of –5.0 °F (±2 °F). Because use of an integrated average temperature of –5.0 °F (±2 °F) as the rating temperature for ice-cream freezers would be more consistent from a technical standpoint, DOE proposes to resolve the conflict between subsections 343(a)(2) and (a)(6)(B)(i) of EPCA (42 U.S.C. 6314(a)(2) and 6314(a)(6)(B)(i)) by incorporating that rating temperature into its test procedure for ice-cream freezers, as provided in ARI Standard 1200–2006.

On December 15, 2005, in response to the Department's request for input on its Schedule Setting for the 2006 Appliance Standards Rulemaking Process (70 FR 61395), ARI urged the Department to place the standards rulemaking for ice-cream freezers, commercial refrigerators, freezers, and refrigerator-freezers with a self-contained condensing unit and without doors, and commercial refrigerators, freezers, and refrigerator-freezers with a remote condensing unit, on its high priority list because the effort requires significant work and the regulatory deadline of January 1, 2009, is just three years away. (ARI, DOE–EE–PS–2006–001, No. 18). Regarding test procedures, ARI stated that ARI Standard 1200 is undergoing an ANSI review to become a national standard, and that ARI expects ANSI to approve the standard in the second quarter of 2006. ARI therefore asked that DOE initiate a review of the standard once this process is complete.

The Department, however, reviewed ARI Standard 1200, and is proposing to adopt it as the DOE test procedure, prior to completion of the ANSI review process. The Department understands that ARI Standard 1200–2004 underwent ANSI review and received sufficient support for ANSI approval, but that ARI revised it to address the two negative votes and resubmitted it to ANSI for approval as ARI Standard 1200–2006. The Department understands that final ANSI action on this standard is now expected in the third or fourth quarter of 2006, and that one of the negative votes has already been reversed. Because DOE anticipates ANSI approval of ARI Standard 1200–2006, it believes the standard will meet the criterion of 42 U.S.C. 6314(a)(6)(A)(i) that allows DOE to adopt, for commercial refrigeration products, test procedures that have been recognized by ANSI.

In sum, ARI Standard 1200–2006 contains rating-temperature provisions for ice-cream freezers; commercial refrigerators, freezers, and refrigerator-freezers with a self-contained condensing unit and without doors; and commercial refrigerators, freezers, and refrigerator-freezers with a remote condensing unit, which will provide a basis for accurate efficiency determinations for these types of equipment, as required under EPCA. (Section 136(f)(1)(B) of EPACT 2005; 42 U.S.C. 6314(a)(6)(C)). In addition, ARI Standard 1200–2006 requires performance tests to be conducted according to the ASHRAE Standard 72 test method, which DOE believes to be a sound method that will produce results that accurately reflect the efficiency of the products tested. The Department also understands that the method has been widely used in the industry, thus indicating that it is not unduly burdensome to conduct. Furthermore, as discussed above, the Department is incorporating ASHRAE Standard 72–2005 by reference into 10 CFR part 431 for other commercial refrigerators, freezers, and refrigerator-freezers. Thus, DOE adoption of ARI Standard 1200–2006, and the consequent use of ASHRAE Standard 72–2005 for testing the equipment under discussion here, avoids any burden that a manufacturer producing all of these types of equipment might incur if a different method was required here. Finally, DOE has reviewed the calculation methods in ARI Standard 1200–2006, as well as the definitions it provides of terms used in the test procedure, and believes they will help to produce accurate results as to the efficiency of the products being tested.

For these reasons, and in anticipation of the standards rulemaking, the Department is proposing to incorporate ARI Standard 1200–2006 by reference into 10 CFR part 431 for ice-cream freezers; commercial refrigerators, freezers, and refrigerator-freezers with a self-contained condensing unit and without doors; and for commercial refrigerators, freezers, and refrigerator-freezers with a remote condensing unit. The Department requests comments on the proposed test procedures for this equipment.

Finally, the Department is proposing a definition of ''ice-cream freezer,'' to be included in 10 CFR 431.62. EPCA does not define this term, and a definition is needed to delineate which products will be covered by the test procedure for this equipment. Today's proposed definition is based on the definition used in the ENERGY STAR program. The Department requests comments on that definition. The Department notes that it recently initiated a rulemaking to set standards for certain commercial refrigeration equipment, including ice-cream freezers, as directed by 42 U.S.C. 6313(c)(4)(A). That rulemaking will address the issue of which products will be covered by the standards.

M. Battery Chargers and External Power Supplies

Section 135(a)(3) of EPACT 2005 amends section 321 of EPCA by adding subsection 321(32) (42 U.S.C. 6291(32)), which defines the term ''battery charger'' as a ''device that charges batteries for consumer products, including battery chargers embedded in other consumer products.'' Similarly, section 135(a)(3) of EPACT 2005 also amends section 321 of EPCA by adding subsection 321(36) (42 U.S.C. 6291(36)), which defines the term ''external power supply'' as ''an external power supply circuit that is used to convert household electric current into DC [direct current] or lower-voltage AC [alternating current] to operate a consumer product.'' Further, section 135(c)(4) of EPACT 2005 amends section 325 of EPCA (42 U.S.C. 6295) by adding subsection (u) for battery chargers and external power supplies. Subsection 325(u)(1)(A) of EPCA (42 U.S.C. 6295(u)(1)(A)) directs the Secretary to prescribe, by rule, definitions and test procedures for measuring the energy consumption of battery chargers and external power supplies. Subsection 325(u)(1)(B) of EPCA (42 U.S.C. 6295(u)(1)(B)(i)) directs the Secretary, in establishing these test procedures, to ''consider existing definitions and test procedures used for measuring energy consumption in standby mode and other modes.'' Finally, subsection 325(u)(1)(E) of EPCA (42 U.S.C. 6295(u)(1)(E)) also states that the Secretary shall determine whether and to what extent to issue standards for these products. In making this determination, the Department will follow the requirements set forth in subsection 325(u)(1)(E) of EPCA. (42 U.S.C. 6295(u)(1)(E)(ii))

While EPACT 2005 addresses battery chargers and external power supplies under one general product heading, today's notice addresses them separately. The Department elected to treat these two products separately because (1) the nature and operation of these products is different; (2) they have separate and discrete utilities to the consumer; (3) the EPA developed separate ENERGY STAR test procedures and program requirements for these products; and 4) several stakeholders participating in the development of the EPA's ENERGY STAR program called for separate treatment of these products.

1. Battery Chargers. The Department has examined the definitions and test procedures under the ''ENERGY STAR Program Requirements for Products with Battery Charging Systems,'' December 2005, and proposes to incorporate by reference into 10 CFR Part 430, with modifications discussed below, the test procedure presented in sections 4.0 and 5.0 of EPA's ENERGY STAR ''Test Methodology for Determining the Energy Performance of Battery Charging Systems, December 2005'' (the ENERGY STAR test method).

As quoted above, subsection 325(u)(1)(B) of EPCA directs the Secretary to consider existing definitions and test procedures for measuring the energy consumption of battery chargers in standby mode and other modes. The only existing energy consumption test procedures that DOE is aware of for this product are test methods in IEEE standards and the ENERGY STAR test method. The Department examined both. It found that none of the IEEE standards was adequate and complete within itself. Only the ENERGY STAR test method, which is based on the IEEE standards, comprehensively addresses energy testing of battery chargers. Sections 4.0 and 5.0 of the ENERGY STAR test procedure were designed to measure energy consumption in the maintenance and standby modes, which appears to be appropriate for consumer products using battery chargers. The Department understands that the standby mode is a non-operational mode where no battery is present in the charger but the charger is plugged in and drawing power. The Department understands that the maintenance mode is the condition where the battery is still connected to the charger, but has been fully charged. Based on its examination of the ENERGY STAR test method, DOE believes that this test method does in fact measure energy consumption in both of these modes and that it does not measure a battery charger's energy consumption when it is in the ''active'' mode, (i.e., is charging a battery). Consequently, the Department believes that it fulfills the EPCA requirements both for standby mode and ''other modes,'' such as maintenance mode.

In today's notice, the Department is proposing to adopt verbatim the statutory definition of battery charger. The Department is also proposing to refine the scope of the test procedure coverage, so that the test method in today's proposed rule has the same applicability as the test method in the ENERGY STAR program. The ENERGY STAR program limits coverage to battery chargers with an input power rating between 2 and 300 watts. The energy labeling and standards program provides a means to promote energy efficiency improvement opportunities of covered products through energy representations and standards. Smaller battery chargers, (i.e., less than 2 watts), because of their size, have few technical opportunities for affecting the energy performance and therefore, consumers would not benefit from the labeling and standards for small battery chargers. Larger battery chargers (i.e., greater than 300 watts) tend to be used for other than residential applications, and as such, are not ''consumer products,'' within the scope of Part B of Title III of EPCA. Thus, DOE is proposing to limit the scope of the test procedures to the same products covered by the ENERGY STAR program, (i.e., 2 to 300 watts). The Department requests comments on the test method scope of coverage contained in section 1 of Appendix Y to Subpart B of Part 430.

In general, DOE found that the ENERGY STAR test method provides sufficient detail, tolerances, and a test protocol to measure the energy consumption of battery chargers, as required under section 325(u)(1)(A) of EPCA. (42 U.S.C. 6295(u)(1)(A) The Department also believes that this test procedure has a reasonable degree of industry support, based on comments submitted to the EPA and the public comment process that EPA and its contractors engaged in while developing this document. However, the Department has identified certain issues pertaining to specific elements contained in the ENERGY STAR test method for battery chargers. The Department requests comments on these and any other issues that may be pertinent to the Department's proposal to adopt this test procedure for battery chargers.

The ENERGY STAR ''Test Methodology for Determining the Energy Performance of Battery Charging Systems,'' December 2005, provides two discrete testing procedures that measure the energy consumption of battery chargers—an abbreviated and a full test methodology. The abbreviated methodology has a test duration of 7 hours and the full test methodology has

a test duration of 48 hours. The Department proposes to adopt the full test methodology, which has a test duration of 48 hours, and invites comment on this proposal.

The Department notes that while the ENERGY STAR program exempts inductively coupled battery charging devices, the sections of the ENERGY STAR test procedure DOE is proposing to adopt, do not include this exemption. The Department believes inductively coupled battery charging devices provide an important consumer utility and are within the scope of the EPACT 2005 definition of ''battery charger.'' Furthermore, DOE believes the nonactive energy use of inductively coupled battery charging devices, which is captured by today's proposed test procedure, would affect the energy efficiency of these devices. Thus, the Department is proposing to adopt the ENERGY STAR test procedure for battery chargers, including inductively coupled battery charging devices. The Department invites comment on this proposal.

The Department understands that certain battery charger designs draw current in short pulses and, therefore, the instrumentation requirements for testing such designs should be capable of fully measuring the energy consumed by these pulses. Based on DOE review, the ENERGY STAR test methodology for a battery charger during testing does not adequately address non-sinusoidal waveforms, including these short pulses of current. Therefore, in order to address this, the Department proposes adding a requirement in section 3 of Appendix Y to Subpart B of Part 430 that addresses the capability of testing equipment to account for crest factor and frequency spectrum in the measurement, in addition to the other ENERGY STAR requirements specified in section 4.0 of the ENERGY STAR test methodology for battery chargers.

Finally, the Department understands that some battery chargers for consumer products can operate over a wide range of input voltages and frequencies. For regulatory purposes in the United States, the Department is only concerned with the performance of a battery charger closest to U.S. voltage conditions, namely 115 volts, 60 hertz. Therefore, the Department proposes to require that manufacturers only conduct this test procedure at this voltage.

Notwithstanding the issues identified above, the EPA's ENERGY STAR ''Test Methodology for Determining the Energy Performance of Battery Charging Systems, December 2005'' satisfies the provisions of section 135(c)(4) of EPACT 2005 to provide a test procedure for measuring the energy consumption of battery chargers. Therefore, DOE proposes to incorporate by reference sections 4.0 and 5.0 of this ENERGY STAR document along with the modifications detailed above into 10 CFR part 430.

2. External Power Supplies. The Department proposes to incorporate by reference into 10 CFR Part 430 sections 4 and 5 of the EPA's ENERGY STAR ''Test Method for Calculating the Energy Efficiency of Single-Voltage External Ac-Dc and Ac-Ac Power Supplies (August 11, 2004).'' The Department found that this test procedure provides sufficient detail, tolerances, and test protocols to measure the energy consumption of external power supplies required under section 325(u) of EPCA, as amended. 42 U.S.C. 6295. The Department also believes that this test procedure has a reasonable degree of industry support, based on comments submitted to the EPA and the public comment process that EPA engaged in while developing these test methods.

Notwithstanding, the Department has identified certain issues pertaining to the ENERGY STAR test procedure for external power supplies. The Department requests comments on these and any other issues that may be pertinent to the Department's proposal to adopt this test procedure for external power supplies.

EPCA, as amended by EPACT 2005, defines external power supply as a circuit that is used to convert household electric current into DC current or lower-voltage AC current to operate a consumer product. 42 U.S.C. 6291(36). In today's notice, the Department is proposing to adopt the statutory definition verbatim. Additionally, the Department is proposing to make the scope of applicability for the test method consistent with that of the ENERGY STAR program, which was designed to address external power supplies used with consumer electronics. The Department believes that the proposed scope of coverage for the external power supply test method does not deviate substantively from the statutory definition, since it is drafted to be applicable to these devices powering consumer electronics. The Department requests comments on the test method scope of coverage contained in section 1 of the new Appendix Z to Subpart B of Part 430.

The Department also understands that some external power supplies for consumer products can operate over a wide range of input voltages and frequencies. For regulatory purposes in the United States, the Department is only concerned with the performance of an external power supply closest to U.S. voltage conditions, namely 115 volts, 60 hertz. Therefore, the Department proposes to require that manufacturers only conduct this test procedure at these voltage conditions.

Furthermore, ENERGY STAR measures the energy consumption of the external power supply at 25, 50, 75, and 100 percent of rated current output. The efficiencies at each loading point are calculated, and then a simple average is calculated to indicate the efficiency of the unit. The Department invites stakeholders to comment on this methodology for determining the active mode efficiency of the device.

The Department understands that power factor, defined as the ratio of actual power drawn in watts to apparent power drawn in volt-amperes, affects the efficiency of electric utility distribution systems. Power factor correction processes are used to adjust this ratio (i.e., the power factor) towards a value of 1.0. The Department invites comments on power factor as it relates to the test procedure proposed for external power supplies. The Department is concerned that, from a utility distribution system perspective, the aggregate effect of external power supplies with low power factors would increase distribution system losses.

Notwithstanding the issues identified above, the EPA's ENERGY STAR ''Test Method for Calculating the Energy Efficiency of Single-Voltage External Ac-Dc and Ac-Ac Power Supplies,'' August 11, 2004, satisfies the provisions of section 135(c)(4)(ii) of EPACT 2005 to provide a test procedure for measuring the energy consumption of external power supplies. Therefore, the Department proposes to incorporate by reference sections 4 and 5 of this ENERGY STAR document along with the modifications detailed above into 10 CFR Part 430.

IV. Discussion—Compliance and Enforcement

A. Sampling, Manufacturer Certification, and Enforcement—General

EPACT 2005 does not specify sampling, manufacturer certification, or DOE enforcement procedures for ensuring compliance with the standards. The Department previously adopted such certification and enforcement procedures for the consumer products that EPCA already covered. These procedures are found in § 430.24 and subpart F to 10 CFR part 430. The Department has reviewed those procedures, and generally bases today's sampling, certification, and

enforcement proposals on them. In addition, on December 13, 1999, the Department previously proposed sampling, certification and enforcement provisions for commercial heating, air conditioning and water heating products (hereafter referred to as the ''December 1999 proposed rule''). 64 FR 69598. That rulemaking is still pending with respect to those proposals, and DOE recently published a supplemental notice of proposed rulemaking that seeks comment on alternatives to certain of those proposals (hereafter referred to as the ''April 2006 supplemental notice''). 71 FR 25103. Some of today's proposals are drawn from the December 1999 proposed rule and the 2006 supplemental notice.

For each consumer product that EPACT 2005 covers and for which DOE proposes test procedures in today's notice, the Department is proposing sampling requirements. These requirements address the number of units of each basic model a manufacturer must test as the basis for rating the model and determining whether it complies with the applicable standard. These sampling plans follow the approach for sampling found in 10 CFR part 430. Once DOE has adopted its final rule containing test procedures and sampling requirements for these consumer products (i.e., ceiling fans, ceiling fan light kits, torchieres, medium base compact fluorescent lamps, and dehumidifiers), each product would automatically become subject to the existing manufacturer certification and DOE enforcement provisions in 10 CFR part 430. These provisions are § 430.62 for certification, and §§ 430.61, 430.71, 430.72, 430.73, and 430.74 for enforcement. Today's proposed rule also includes an amendment to section 430.62(a)(4) about information that manufacturers must include in certification reports for the consumer products the rule covers.

For each type of commercial or industrial equipment EPACT 2005 covers and for which DOE proposes test procedures in today's notice (except very large air conditioning equipment, which is addressed below), the Department is proposing to adopt sampling requirements for manufacturer testing similar to those in Part 430 for consumer products.

The Department is also proposing to require that each manufacturer of commercial or industrial equipment file a compliance statement and certification reports. The compliance statement is essentially a one-time filing in which the manufacturer or private labeler states that it is in compliance with applicable energy conservation requirements, and the certification reports generally provide the efficiency, or energy or water use, as applicable, for each covered basic model that it distributes. These requirements take the same approach as the certification procedures in Part 430 and incorporate, with some modifications, certification provisions that the Department proposed for commercial heating, air conditioning, and water heating equipment in the December 1999 proposed rule and the April 2006 supplemental proposed rule. In today's proposal, the Department has reorganized and renumbered these provisions to reflect the current structure of 10 CFR part 431. Moreover, as set forth in proposed Subpart T, they would apply not only to the equipment for which DOE proposes test procedures in today's notice, but also to distribution transformers and the commercial heating, air conditioning, and water heating equipment for which DOE originally proposed them. (The proposed certification procedures would not apply to electric motors, for which certification requirements are already in place in Part 431). Although DOE, provided an opportunity for comment on the application of these procedures in the December 1999 proposed rule , it will accept comment in response to this notice on their application to heating, ventilation, air-conditioning and water heating (HVAC and WH) products and to the other equipment to which DOE is now proposing to apply them.

Today's proposed rule also includes provisions as to DOE enforcement of the standards. As with the certification proposal discussed in the previous paragraph, the proposals as to DOE's initial steps in an enforcement action and manufacturer cessation of distribution of non-complying equipment, follow the approach for such provisions in Part 430 and are essentially the same procedures DOE proposed for HVAC and WH products in the December 1999 proposed rule. For enforcement testing, including, in particular, provisions on sampling during such testing and determination of compliance or non-compliance, the Department is proposing two approaches. For commercial prerinse spray valves, illuminated exit signs, traffic signal modules and pedestrian modules, and refrigerated bottled or canned vending machines, DOE believes each basic model is manufactured in relatively large quantities, similar to consumer products covered by Part 430, and the Department is proposing to adopt the same provisions that apply to consumer products under Part 430. For automatic commercial ice makers, as well as commercial refrigerators, freezers, and refrigerator-freezers, DOE understands each basic model is manufactured in smaller quantities, similar to commercial heating, air conditioning and water heating equipment, and the Department is proposing the same provisions it proposed for those products in the 2006 supplemental notice. (The proposed enforcement procedures do not apply to electric motors, for which enforcement requirements are already in place in Subpart U of Part 431.) Moreover, only the proposed provisions as to cessation of distribution of non-complying equipment apply to distribution transformers, because DOE has already adopted provisions as to the initial steps in an enforcement action and as to enforcement testing for this equipment. 71 FR 24972.

The Department notes that, as with the certification provisions, today's proposed rule also includes provisions on DOE's initial steps in enforcement action and manufacturer cessation of distribution of non-complying equipment would apply not only to distribution transformers and equipment for which DOE is proposing test procedures in today's notice, but also to commercial HVAC and WH products for which DOE previously proposed such provisions. The Department will accept comments in response to this notice on the application of these proposals to HVAC and WH products, and to the other equipment to which DOE is now proposing to apply them.

As indicated above, in the December 1999 proposed rule, DOE proposed compliance and enforcement procedures for HVAC and WH products. On October 21, 2004, DOE adopted a final rule incorporating some of the general provisions proposed for this equipment, including certain enforcement provisions (hereafter referred to as the ''October 2004 rule''). 69 FR 61916. These enforcement provisions are now set forth in §§ 431.382, 431.386 and 431.387, 70 FR 60416, previously §§ 431.191, 431.195 and 431.196 (2005). The provisions apply to ''covered equipment'' generally, which comprises electric motors and commercial HVAC and WH products. (10 CFR 431.2) Once DOE has adopted its final rule in this rulemaking, the commercial and industrial equipment the rule covers would automatically become subject to these enforcement provisions.

In the October 2004 rule, DOE did not adopt the 1999 proposed rule's

proposals that commercial HVAC and WH manufacturers use to determine and certify compliance, or most of its enforcement proposals, and the rulemaking continues on these proposals. In the 2006 supplemental notice, DOE sought comments on alternatives to the December 1999 proposed rule, primarily about: (1) Manufacturer sampling plans; (2) other methods for manufacturers to rate their equipment, including voluntary independent certification programs and alternative efficiency determination methods (AEDMs); and (3) sampling in enforcement testing. 71 FR 25103. Moreover, although the December 1999 proposed rule did not concern the ''very large commercial package air conditioning and heating equipment'' that EPACT 2005 added to EPCA under section 340(1)(D) (42 U.S.C. 6311(1)(D)), the 2006 supplemental notice seeks comment on applying the proposals in that notice to this equipment.

The December 1999 proposed rule used subpart designations and section numbers that corresponded to the structure of 10 CFR part 431 at that time. Since then, DOE has reorganized and renumbered the rules in 10 CFR part 431 to incorporate the commercial and industrial equipment that EPACT 2005 added. 70 FR 60407. To facilitate public review and comment on the 2006 supplemental notice, and comparison of its proposals with those in the 1999 proposed rule, DOE did not change the subpart designations and section numbers to correspond to the reorganized 10 CFR part 431. However, as DOE stated in the 2006 supplemental notice, the Department will reorganize and renumber the sampling, certification, and enforcement provisions in the final rule to reflect the new structure of 10 CFR Part 431. In addition, based on comments received on the 2006 supplemental notice and today's proposed rule, as well as the timing of the two rulemakings, DOE will decide whether to publish two final rules or a single final rule with the sampling, certification, and enforcement provisions for commercial and industrial equipment that EPACT 2005 added, and for commercial heating, ventilating, air conditioning, and water heating equipment.

B. Sampling Plans for Compliance and Enforcement Testing

In accordance with section 323(b)(3) of EPCA (42 U.S.C. 6293(b)(3)), any test procedure that DOE prescribes shall be reasonably designed to produce test results that measure, for example, energy efficiency or energy use, and are not unduly burdensome to conduct. The Department proposes the use of a statistically meaningful sampling procedure for selecting test specimens of consumer products to reduce the testing burden on manufacturers, while giving sufficient assurance that the true mean energy efficiency of a basic model meets or exceeds the applicable energy efficiency standard. The Department reviewed sampling plans for consumer products and commercial and industrial equipment that could provide guidance on how many and which units to test to determine compliance.[7] The Department considered four factors in this process: (1) Minimizing manufacturers' testing time and costs; (2) assuring compatibility with other sampling plans the Department has promulgated; (3) providing a highly statistically valid probability that basic models that are tested meet applicable energy conservation standards; and (4) providing a highly statistically valid probability that a manufacturer preliminarily found to be in noncompliance will actually be in noncompliance.

Based on a review of sampling plans for consumer products found in subpart F of 10 CFR Part 430, the Department considered three alternatives for the specification of test sample size: (1) Test every unit to determine with 100-percent certainty that each one complies with the statute; (2) test a predetermined number of units to yield a high level of statistical confidence (e.g., 90 percent); and (3) test until a determination can be made that a basic model does, or does not comply.

In this last alternative, the size of the total sample is not determined in advance. Instead, the manufacturer selects a sample at random from a production line and, after each unit or group of units is tested, either accepts the sample, rejects the sample, or continues testing additional sample units until a decision is ultimately reached. This method often permits reaching a statistically valid decision on the basis of fewer tests than fixed-number sampling. This third alternative is the basis for most of the statistical sampling procedures that DOE has established for consumer products under 10 CFR 430.24, Units to be Tested. The Department proposes to adopt such sampling procedures described in detail below for each of the consumer products and certain commercial and industrial equipment.

In the case of actual testing, the proposed procedures require randomly selecting and testing a sample of production units of a representative model. A simple average of the values would be calculated, which would be the actual mean value of the sample. For each representative model, a sample of sufficient size would be selected at random and tested to ensure that any represented value of energy efficiency is, for example, no greater than the lower of (A) the mean of the sample; or (B) the lower 95-percent confidence limit of the mean of the entire population of that basic model, divided by a coefficient applicable to the represented value. These coefficients are intended to reasonably reflect variations in material, and in the manufacturing and testing processes.

The Department is interested in receiving comments and data concerning the accuracy and workability of these sampling plans for each product and welcomes discussion on improvements or alternatives to this approach. The Department is particularly interested in gathering comments on whether the proposed statistical sampling plan is appropriate for testing each of the consumer products in today's notice. The Department asks stakeholders to pay close attention to the practicality and applicability of the proposed confidence limits and coefficients proposed for each consumer product. The Department also seeks comment on whether a more valid approach exists within the industry that establishes a sampling plan for the product. Finally, the Department proposes to adapt such sampling procedures for certain commercial equipment described in detail below, and invites comments on whether the approach used to develop sampling plans for consumer products should be applied to commercial equipment.

C. Manufacturer Certification for Distribution Transformers

As discussed in section IV.A. of today's notice, the Department is proposing manufacturer certification procedures that would apply to most commercial and industrial equipment, including those distribution transformers subject to energy conservation standards. EPACT 2005 established energy conservation standards for low-voltage dry-type distribution transformers manufactured on or after January 1, 2007. Thus, manufacturers of these transformers would be subject to the proposed certification provisions upon their adoption, although today's proposed

[7] The sampling plans reviewed for consumer products are those found in 10 CFR Part 430 and the sampling plans reviewed for commercial and industrial equipment are those found in 10 CFR Part 431 and the December 1999 proposed rule. 64 FR 69598.

rule states that manufacturers of low-voltage dry-type distribution transformers would not have to comply with these certification requirements until January 1, 2008.[8] The proposed certification provisions would not be applicable, however, to other types of distribution transformers (specifically, liquid-immersed and medium-voltage dry-type) unless or until the Department promulgates energy conservation standards for them.

The certification requirements have two elements: a compliance statement and certification reports. The Department is proposing a single format and set of requirements for compliance statements for all covered commercial and industrial equipment (except electric motors), including distribution transformers. The Department is proposing an approach for certification reports for distribution transformers similar to that which currently exists for electric motors, due to the large number of distribution transformer models that each manufacturer typically produces. This proposed approach is different from what DOE is proposing for other covered equipment.

For certification reporting on regulated equipment, the DOE's procedures are for manufacturers to report on the efficiency or energy or water consumption of each basic model. A basic model are those models that have no differentiating electrical, physical, or functional features that affect energy consumption. For distribution transformers, each time a change is made to a core or winding, the energy consumption of the transformer can change, making that design a different basic model. Therefore, due to the way in which distribution transformers are specified and manufactured, customized transformer designs will virtually always be a different basic model. Customized designs are necessary to meet customer requirements and to accommodate price changes in the raw materials used in the production of a distribution transformer. The Department understands that some manufacturers could produce literally thousands of basic models each year and is concerned that applying to them the same certification and reporting requirements as found in 10 CFR Part 430 could place a significant burden on distribution transformer manufacturers.

The Department considered several approaches to manufacturer certification reporting requirements for distribution transformers, and decided to propose a methodology similar to the one electric motor manufacturers follow. 10 CFR 431.36(b)(2) and Appendix C to Subpart B of Part 431. The Department is proposing this methodology because (1) manufacturers would still be required to certify in the compliance statement that all basic models manufactured or imported will meet or exceed the minimum efficiency standards; (2) it would minimize the reporting burden on manufacturers; and (3) the Department believes that manufacturers of electric motors and distribution transformers encounter similar market dynamics and manufacturing issues.

The Department proposes that each distribution transformer manufacturer submit a certification report on the efficiency of the least efficient basic model within a kilovolt-ampere (kVA) group. For low-voltage dry-type distribution transformers, kVA groups would be defined as the combination of a kVA rating and number of phases for a transformer, as presented in the table of efficiency values in § 431.196, as amended by the October 2005 final rule. 70 FR 60417. These are the groupings EPACT 2005 uses for the minimum efficiency standards for low-voltage dry-type distribution transformers: single-phase kVA groups would be 15 kVA, 25 kVA, 37.5 kVA, and so on; and three-phase kVA groups would include 15 kVA, 30 kVA, 45 kVA, and so on. In total, for low-voltage dry-type distribution transformers, there would be 20 kVA groups. A manufacturer may have several basic models within any one of these 20 kVA groups (e.g., 25 kVA, single-phase), but it would only certify to the Department the efficiency of the basic model that had the lowest efficiency within that kVA group. Basic models that have non-standard kVA ratings (i.e., falling between two kVA groups) would be included in the next higher kVA group. This approach is consistent with how the Institute of Electrical and Electronics Engineers (IEEE) treats non-standard kVA ratings with respect to manufacturing and testing requirements.

Depending on the outcome of the rulemaking regarding energy conservation standards for liquid-immersed and medium-voltage dry-type distribution transformers, the number of groupings for which DOE promulgates standards for these transformers might be greater than the number for low-voltage dry-type distribution transformers. If the Department adopts equipment categories and energy conservation standards for liquid-immersed distribution transformers, which reflect the methodology followed under the rulemaking for low-voltage dry-type distribution transformers, then groups of kVA values would be created based on insulation type (liquid-immersed) and the number of phases (single or three). Similarly, if the Department adopts equipment categories and energy conservation standards for medium-voltage dry-type distribution transformers, then groups of kVA values would be created based on the insulation type (dry-type), number of phases (single or three), and the basic impulse insulation level, or BIL rating, such as 20–45 kV BIL, 46–95 kV BIL, and greater than 96 kV BIL.

In today's proposed rule, DOE is proposing that manufacturers set forth in their certification reports the efficiency of their least efficient basic model in each kVA group that is delineated by these factors. (Should the final rule regarding energy conservation standards for liquid-immersed and medium-voltage dry-type distribution transformers contain standards based on a different grouping, DOE would revise its requirements for certification reports accordingly.) The Department believes the approach is appropriate, in view of the potentially large number of basic models of distribution transformers manufactured each year. Further, by certifying that the least efficient basic model within a particular kVA group meets the applicable energy conservation standard, the manufacturer would, in effect, be certifying that all basic models produced within that kVA group have an efficiency equal to or greater than the certified efficiency rating. In summary, a manufacturer would submit to DOE the certification report in conjunction with a compliance statement affirming that all distribution transformers produced by that manufacturer will be at, or above, the applicable energy conservation standards detailed in § 431.196 of 10 CFR Part 431. Moreover, the Department believes that the proposed certification report would minimize the reporting burden on manufacturers while fulfilling the purposes served by the compliance statement and certification report required for consumer appliances at 10 CFR 430.62.

For new basic models that a manufacturer produces or imports subject to energy conservation standards for distribution transformers, the Department proposes to follow the methodology recommended by the National Electrical Manufacturers Association (NEMA) for electric motors and adopted by the Department. By responding to changing customer requirements and input-material price

[8] The Department expects this rulemaking to be finalized in November 2006. The standards for low-voltage dry-type distribution transformers go into effect on January 1, 2007. Therefore, the Department is providing manufacturers until January 1, 2008 for testing and submittal of reports.

volatility, distribution transformer manufacturers will continue to introduce new basic models across their product offerings. The Department seeks to avoid imposing a burden of excessive reporting of certification reporting for such new basic models. Therefore the Department proposes that certification reports will be submitted only if the manufacturer has not previously submitted to DOE a certification report for a basic model of distribution transformer that (1) is in the same kVA grouping as the new basic model, and (2) has a lower efficiency than the new basic model.

D. General Requirements for Consumer Products and Commercial and Industrial Equipment

Consumer products and commercial and industrial equipment covered by DOE's regulations are subject to various provisions in 10 CFR Parts 430 and 431, respectively. These provisions address a variety of matters, such as waivers of applicable test procedures, treatment of imported and exported equipment, maintenance of records, subpoenas, confidentiality of information, and petitions to exempt state regulations from preemption. Once DOE has adopted its final rule, the consumer products and commercial and industrial equipment covered by the rule would, by virtue of such action, automatically become subject to such provisions. For consumer products, those provisions are in §§ 430.27, 430.40 through 430.49, 430.50 through 430.57, 430.64, 430.65, 430.72, and 430.75 of 10 CFR Part 430. For commercial equipment, those provisions are in §§ 431.401, 431.403 through 431.407, and 431.421 through 431.430, 70 FR 60417, which previously were §§ 431.201, 431.203 through 431.207, and 431.211 through 431.220 (2005).

The Department is also proposing in today's rule provisions as to the preemption of State energy use and efficiency regulations for the consumer products and commercial or industrial equipment which were added to EPCA by EPACT 2005. The EPACT 2005 amendments to EPCA include various provisions concerning preemption with respect to these products and equipment. 42 U.S.C. 6295(ff)(7), 6295(gg), and 6316(e). All of the provisions applicable to consumer products provide that, once Federal energy conservation standards take effect for a product, the preemption requirements of section 327 of EPCA (42 U.S.C. 6297) become applicable to any State or local standard for that product. 42 U.S.C. 6295(ff)(7) and 6295(gg). The Department's existing rules for covered consumer products essentially embody such a requirement, providing that any Federal standard that is in effect for ''a covered product'' preempts any State standard for the product that is not identical to the Federal standard, except as otherwise provided in section 327 of EPCA. 10 CFR 430.33 Since this provision of DOE regulations is consistent with EPCA's preemption provisions for the newly covered consumer products, the Department proposes to make it applicable to them. This will occur as a consequence of DOE's amendment, as proposed today, of its definition of ''covered product'' in 10 CFR 430.2 to add battery chargers, ceiling fans, ceiling fan light kits, external power supplies, medium base compact fluorescent lamps, and torchieres to the list of covered products.

For the new commercial and industrial equipment added to EPCA by EPACT 2005, the pattern is largely the same as for consumer products. A common element of the preemption provisions for most of this equipment is that, once Federal energy conservation standards take effect for a type of equipment, the preemption requirements of section 327 of EPCA (42 U.S.C. 6297) become applicable to any State or local standard for that equipment. 42 U.S.C. 6295(gg) and 6316(d) through (f). Although current DOE rules address preemption with respect to electric motors, 10 CFR 431.26, and commercial heating, air conditioning and water heating equipment, 10 CFR 431.202, these provisions are specific to those products and do not concern commercial and industrial equipment generally. Therefore, for the commercial and industrial equipment added to EPCA by EPACT 2005, as well as distribution transformers, proposed § 431.408 of today's proposed rule contains provisions on preemption that are similar to those in 10 CFR 430.33 for consumer products. However, for commercial refrigerators, freezers, and refrigerator-freezers, as well as automatic commercial ice makers and commercial clothes washers, EPCA sets schedules for DOE to issue rules as to amendment of the initial standards, and suspends preemption during certain periods for any equipment for which DOE does not issue such a rule on schedule. 42 U.S.C. 6313(c)(5), (d)(3), and (e)(2), and 6316(e)(4), (f)(3), and (g)(1). The Department references these limitations on preemption in proposed section 431.408 of 10 CFR Part 431.

V. Corrections to the Recent Technical Amendment to DOE's Energy Conservation Standards

In the final rule that will result from today's notice, the Department intends to incorporate minor revisions to the October 18, 2005, final rule in which it adopted a technical amendment to its energy conservation standards for certain consumer products and commercial and industrial equipment. 70 FR 60407. These revisions consist of editorial corrections, corrections to errors in fact, and clarifying language. Each of the revisions will be added to the appropriate section of the CFR in the final rule. Because the revisions will simply conform DOE's regulations to EPACT 2005's recent amendments to EPCA, DOE neither is required to seek, nor seeks, public comment on them. The corrections and clarifications to the October 2005 final rule are as follows:

1. In section 430.2, in the definition of ''Dehumidifier,'' DOE will change ''and mechanically encased assembly'' to ''and mechanically refrigerated encased assembly.'' The definition now in section 430.2 is the same as the definition in EPACT 2005. The EPACT 2005 definition, however, appears to be drawn from definitions in ANSI/AHAM Standard DH–1–2003 and the ENERGY STAR program, both of which include the word ''refrigerated.'' The Department also believes that an assembly is not properly described as ''mechanically encased.'' Therefore, the Department will add the word ''refrigerated,'' as indicated, as a clarifying modification to the definition of ''Dehumidifier.''

2. In § 430.32(u), the Department will make the following changes in the table on standards for medium base CFLs:

a. In the ''Requirements'' column and opposite ''Lamp Power (Watts) & Configuration,'' change ''Minimum Efficiency: lumen/watt'' to ''Minimum Efficacy: lumens/watt.''

b. In the ''Factor'' column, change ''Base Lamp'' to ''Bare Lamp.''

c. In the ''Factor'' column, delete the reference to ''Covered Lamp (with reflector),'' ''Lamp Power <20,'' and ''Lamp Power >20'' because these products are not covered under EPACT 2005. Correspondingly, delete ''33.0 '' and ''40.0 '' from the ''Requirements'' column.

d. In the ''Requirements'' column, opposite ''Average Rated Lamp Life,'' delete ''and qualification form.'' The clause would then read, ''as declared by the manufacturer on packaging.''

e. In footnote 1, change ''in the base up an/or'' to ''in the base up and/or.''

3. In section 431.97(b), the Department will make the following changes:

a. In the text preceding Table 1 in paragraph (a), the Department will add the words ''in the case of air-cooled equipment with a capacity greater than 65,000 Btu per hour,'' after the date ''January 1, 2010.'' This change is needed because the new standards promulgated in section 136(b)(5) of EPACT 2005 for commercial package air-conditioning and heating equipment apply only to air-cooled equipment larger than 65,000 Btu per hour. (42 U.S.C. 6313(a)(7)–(9)) The change makes clear that the minimum cooling efficiency levels (shown in Table 1) and minimum heating efficiency levels (shown in Table 2) for water cooled, evaporatively cooled, and water-source equipment with cooling capacities less than 240,000 Btu/h and air-cooled three-phase equipment with cooling capacities of less than 65,000 Btu/h will remain applicable after January 1, 2010. Standards in section 431.97(b) for air-cooled equipment also will be updated after January 1, 2010.

b. In the text preceding the table, the Department will add the term ''Air-cooled'' at the beginning, and will insert the words ''with cooling capacities equal to or greater than 65,000 Btu/h and less than 760,000 Btu/h'' after the date ''January 1, 2010.'' These changes are needed to more accurately describe the equipment covered by the efficiency standards set forth in section 431.97(b).

c. In the table, DOE will change ''Very large commercial package air conditioning (air-cooled)'' to ''Very large commercial package air conditioning and heating equipment (air-cooled).'' This change will correct the inadvertent omission of three words, and conforms the language of the table to that of the relevant provisions of EPACT 2005.

4. In § 431.226(a) for traffic signal modules and pedestrian modules, change the requirements from ''a nominal wattage no greater than'' to ''a nominal wattage and maximum wattage no greater than.'' This change will conform the language introducing the table in section 431.226(a) with the headings in the table.

VI. Procedural Requirements

A. Review Under Executive Order 12866, ''Regulatory Planning and Review''

Today's proposed rule is not a ''significant regulatory action'' under section 3(f)(1) of Executive Order 12866, ''Regulatory Planning and Review.'' 58 FR 51735 (October 4, 1993). Accordingly, today's action was not subject to review by the Office of Information and Regulatory Affairs (OIRA) in the Office of Management and Budget (OMB).

B. Review Under the Regulatory Flexibility Act

The Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*) requires preparation of an initial regulatory flexibility analysis for any rule that by law must be proposed for public comment, unless the agency certifies that the rule, if promulgated, will not have a significant economic impact on a substantial number of small entities. A regulatory flexibility analysis examines the impact of the rule on small entities and considers alternative ways of reducing negative impacts. Also, as required by Executive Order 13272, *Proper Consideration of Small Entities in Agency Rulemaking,* 67 FR 53461 (August 16, 2002), DOE published procedures and policies on February 19, 2003, to ensure that the potential impacts of its rules on small entities are properly considered during the rulemaking process. 68 FR 7990. The Department has made its procedures and policies available on the Office of General Counsel's Web site: *http://www.gc.doe.gov.*

EPACT 2005 amended EPCA to incorporate into DOE's energy conservation program certain consumer products and commercial and industrial equipment, including the products for which DOE is proposing test procedures in this notice. On October 18, 2005, the Department published in the **Federal Register** a technical amendment to place in the Code of Federal Regulations the energy conservation standards, and related definitions, that Congress prescribed in EPACT 2005. 70 FR 60407. Today, the Department is publishing further technical amendments to certain energy conservation standards for consumer products and commercial and industrial equipment published in the **Federal Register** on October 8, 2005. DOE is proposing to revise the Code of Federal Regulations to incorporate, essentially without substantive change, the energy conservation test procedures that Congress prescribed or otherwise identified in EPACT 2005 for certain consumer products and commercial and industrial equipment. The Department is also proposing to adopt test procedures for consumer products and commercial and industrial equipment for which EPACT did not identify specific test procedures.

The Department reviewed today's proposed rule under the provisions of the Regulatory Flexibility Act and the policies and procedures published on February 19, 2003. The Department conducted its examination for the products and equipment covered under EPACT 2005 in several groups: equipment for which EPACT 2005 amended EPCA to direct DOE to adopt test procedures the statute identifies; products or equipment for which the EPACT 2005 amendments to EPCA do not specifically identify any test procedure; and products or equipment for which the EPACT 2005 amendments mandate that DOE base its test procedures on test procedures the statute identifies.

EPACT 2005 establishes specific test procedures for automatic commercial ice makers; for commercial refrigerators, freezers, and refrigerator-freezers for which the statute prescribes standards; and for very large commercial package air conditioning and heating equipment (240,000 Btu/h through 760,000 Btu/h). Since EPCA now mandates the test procedures, they are incorporated into today's proposed rule. Any costs of complying with them are imposed by EPCA and not the rule. For this equipment, the Department is merely incorporating by reference into 10 CFR Part 431 the required test procedures as the statute directs. Therefore, the Department concludes that the proposed rule would not impose a significant impact on a substantial number of small businesses producing automatic commercial ice makers; commercial refrigerators, freezers, and refrigerator-freezers; or very large commercial package air conditioning and heating equipment (240,000 Btu/h through 760,000 Btu/h).

EPACT 2005 does not prescribe test procedures for all products and equipment it addresses. For example, EPACT 2005 establishes energy conservation design requirements for commercial unit heaters. EPACT 2005 also does not prescribe a test procedure for torchieres and ceiling fan light kits other than those with medium screw base or pin-based sockets. However, the Department is proposing a test procedure for these two products and is soliciting stakeholder comment on the application of the test procedure. The Department is not aware of any domestically manufactured torchieres and ceiling fan light kits other than those with medium screw base or pin-based sockets. The Department understands that virtually all torchieres and ceiling fan light kits other than those with medium screw base or pin-based sockets sold in the U.S. today are manufactured either in Mexico or China. The Regulatory Flexibility Act requires examination of the impact of a

proposed rule on only U.S. firms. For these reasons, the Department certifies that the rule will not impose a significant impact on a substantial number of small businesses producing unit heaters, torchieres, or ceiling fan light kits other than those with medium screw base or pin-based sockets.

For the remaining products and equipment that EPACT 2005 covers and today's proposed rule addresses, the proposed test procedures are based on test procedures developed and already in general use by industry. Many manufacturers have been redesigning the products and equipment covered under today's proposed rule, and testing them for compliance with existing voluntary performance standards such as the ENERGY STAR program requirements, using industry-developed test procedures that are the basis for the test procedures in EPACT 2005. These products and equipment include dehumidifiers, commercial prerinse spray valves, illuminated exit signs, ceiling fan light kits with medium screw base and pin-based sockets, medium-base CFLs, traffic signal modules, and pedestrian modules. To the extent manufacturers already test their products for efficiency using the test procedures identified in EPACT 2005, and incorporated into today's proposed rule, to assure that the products meet existing energy conservation requirements, manufacturers would experience no additional burdens if DOE adopts these test procedures and requires manufacturers to use them. Furthermore, as to the test procedures proposed today that EPACT 2005 directs DOE to adopt, and arguably for the proposed test procedures that EPACT 2005 specifically identifies and states shall be the basis for the DOE test procedure, any cost of complying with the proposed rule arises from the underlying statutory requirement and not the rule itself. Moreover, for the products and equipment for which EPACT 2005 prescribes energy efficiency standards, implicit in such requirements is that manufacturers must test their products to assure compliance with the standards. For all of these reasons, DOE believes today's proposed test procedures would not impose significant economic costs on manufacturers, including small manufacturers, of these products.

Certain products and equipment—ceiling fans, battery chargers, external power supplies, and refrigerated bottled and canned beverage vending machines—are the subject of voluntary standards and/or test procedures but are not yet covered by DOE energy conservation standards. The Department's adoption in this rulemaking of the test procedures proposed for these products would entail even less burden for their manufactures than described in the previous paragraph, because these manufacturers would not be required to perform testing to establish compliance with standards. Thus, DOE believes the proposed rule clearly would not impose significant economic costs on small manufacturers of these products.

The proposed rule also has been drafted to minimize the testing burden for manufacturers. For example, the proposed statistical sampling procedures are based on procedures established for consumer appliance products at 10 CFR 430.24. These procedures are designed to keep the testing burden on manufacturers as low as possible, while still providing confidence that the test results can be applied to all units of the same basic model. Also, regardless of whether DOE prescribes such procedures, manufacturers would have to assure themselves that their products comply with applicable standards. The Department believes that the proposed procedures reduce the burden that manufacturers might undertake, in the absence of the procedures, to establish the compliance of their products and equipment.

As to the proposed maintenance of records and the compliance reporting requirements, they are also based largely on current industry practices for similar products and equipment under 10 CFR Part 430 and 10 CFR Part 431. Moreover, for the products and equipment covered by this notice, manufacturers participating in the ENERGY STAR program already report the energy performance of their products to EPA, and many report such performance to industry trade associations such as ARI. The Department also understands that, as a matter of sound business practice, manufacturers routinely maintain the types of records as to product and equipment testing that today's rule would require. For all of these reasons, DOE believes that the cost of complying with the proposed rule, excluding the cost inherent in complying with the applicable energy conservation standards imposed by EPACT 2005, would not be significant for small manufacturers of these products.

Based on the foregoing factual basis, DOE certifies that this proposed rule would not have a significant economic impact on a substantial number of small entities. The Department invites comments on this certification.

C. Review Under the Paperwork Reduction Act

The proposed rule would require manufacturers of covered consumer products and commercial and industrial equipment to maintain records about how they determined the energy efficiency or energy consumption of their products. The proposed rule also would require manufacturers to make a one-time submission by each manufacturer, stating in essence that it is complying with the applicable energy conservation standards and test procedures, as well as certification reports that set forth the energy performance of the basic models it manufactures. The certification reports are submitted once for each basic model, either when the requirements go into effect or when the manufacturer begins distribution of that model. The proposed collections of information are necessary for implementing and monitoring compliance with the efficiency standards and testing requirements for the consumer products and commercial and industrial equipment mandated by EPCA.

Under the Paperwork Reduction Act, an agency may not conduct or sponsor a collection of information unless the collection displays a currently valid OMB control number (44 U.S.C. 3506(c)(1)(B)(iii)(V)). The certification and recordkeeping requirements for consumer products in 10 CFR Part 430 have previously been assigned OMB control number 1910–1400. The proposed certification and recordkeeping requirements for the commercial and industrial equipment in 10 CFR Part 431 must be approved and assigned a control number by OMB. DOE has submitted these proposed certification and recordkeeping requirements to OMB for review and approval under the Paperwork Reduction Act, 44 U.S.C. 3501 *et seq.*

The following are the DOE estimates of the total annual reporting and recordkeeping burden imposed on manufacturers of commercial and industrial equipment by today's proposed rule.

- For ceiling fans the estimated number of covered manufacturing firms is 20. The total annual reporting and recordkeeping burden from compliance with the proposed rule is expected to be 3,200 hours per year. (20 firms × 160 hours per firm).
- For ceiling fan light kits the estimated number of covered manufacturing firms is 20. The total annual reporting and recordkeeping burden from compliance with the proposed rule is expected to be 3,200

hours per year. (20 firms × 160 hours per firm).

• For dehumidifiers the estimated number of covered manufacturing firms is 22. The total annual reporting and recordkeeping burden from compliance with the proposed rule is expected to be 3,520 hours per year. (22 firms × 160 hours per firm).

• For medium base compact fluorescent lamps the estimated number of covered manufacturing firms is 112. The total annual reporting and recordkeeping burden from compliance with the proposed rule is expected to be 17,920 hours per year. (112 firms × 160 hours per firm).

• For torchieres the estimated number of covered manufacturing firms is 12. The total annual reporting and recordkeeping burden from compliance with the proposed rule is expected to be 1,920 hours per year. (12 firms × 160 hours per firm).

• For unit heaters the estimated number of covered manufacturing firms is 15. The total annual reporting and recordkeeping burden from compliance with the proposed rule is expected to be 2,400 hours per year. (15 firms × 160 hours per firm).

• For automatic commercial ice makers the estimated number of covered manufacturing firms is 10. The total annual reporting and recordkeeping burden from compliance with the proposed rule is expected to be 1,600 hours per year. (10 firms × 160 hours per firm).

• For commercial prerinse spray valves the estimated number of covered manufacturing firms is 5. The total annual reporting and recordkeeping burden from compliance with the proposed rule is expected to be 800 hours per year. (5 firms × 160 hours per firm).

• For illuminated exit signs the estimated number of covered manufacturing firms is 15. The total annual reporting and recordkeeping burden from compliance with the proposed rule is expected to be 7,840 hours per year. (49 firms × 160 hours per firm).

• For traffic signal modules and pedestrian modules, the estimated number of covered manufacturing firms is 8. The total annual reporting and recordkeeping burden from compliance with the proposed rule is expected to be 1,280 hours per year. (8 firms × 160 hours per firm).

• For very large commercial package air-conditioning and heating equipment, the estimated number of covered manufacturing firms is 15. The total annual reporting and recordkeeping burden from compliance with the proposed rule is expected to be 2,400 hours per year. (15 firms × 160 hours per firm).

• For commercial refrigerators, freezers, and refrigerator-freezers, the estimated number of covered manufacturing firms is 23. The total annual reporting and recordkeeping burden from compliance with the proposed rule is expected to be 3,680 hours per year. (23 firms × 160 hours per firm).

In developing the burden estimates, DOE considered that each manufacturer is required to comply with the statutory energy efficiency standards for each type of commercial and industrial equipment it is manufacturing on the effective date of the Act, and for each model it begins to manufacture after that date. The required certification would contain the type of information that many manufacturers already submit to trade associations or government agencies, such as the Environmental Protection Agency under the ENERGY STAR program. Those manufacturers should be able to comply with the proposed certification without undue burden. Moreover, DOE understands that manufacturers already maintain the types of records the proposed rule would require them to keep.

The Department believes the collection of information required by this proposed rule is the least burdensome method of meeting the statutory requirements and achieving the program objectives of the DOE compliance certification program for these products and equipment. Nevertheless, the Department invites comments concerning the estimated paperwork reporting burden. DOE is particularly interested in comments on the accuracy of DOE's burden estimates and on any means of minimizing the burden of the collection of information on manufacturers that must comply with the certification and recordkeeping requirements. Send comments to the Department in accordance with the instructions in the **DATES** and **ADDRESSES** sections and section VII.D. of this notice of proposed rulemaking, and to the Office of Information and Regulatory Affairs, Office of Management and Budget, Washington, DC 20503, marked ''Attention: Desk Officer for DOE.''

D. Review Under the National Environmental Policy Act of 1969

DOE has determined that this rule falls into a class of actions that are categorically excluded from review under the National Environmental Policy Act of 1969 (42 U.S.C. 4321 *et seq.*) and the Department's implementing regulations at 10 CFR part 1021. Specifically, this rule establishing test procedures will not affect the quality or distribution of energy and will not result in any environmental impacts, and, therefore, is covered by the Categorical Exclusion in paragraph A6 to subpart D, 10 CFR part 1021. Accordingly, neither an environmental assessment nor an environmental impact statement is required.

E. Review Under Executive Order 13132, ''Federalism''

Executive Order 13132, ''Federalism,'' 64 FR 43255 (August 4, 1999), imposes certain requirements on agencies formulating and implementing policies or regulations that preempt State law or that have federalism implications. The Executive Order requires agencies to examine the constitutional and statutory authority supporting any action that would limit the policymaking discretion of the States and to carefully assess the necessity for such actions. The Executive Order also requires agencies to have an accountable process to ensure meaningful and timely input by State and local officials in developing regulatory policies that have federalism implications. On March 14, 2000, DOE published a statement of policy describing the intergovernmental consultation process it will follow in developing such regulations. 65 FR 13735. DOE examined this proposed rule and determined that it does not have a substantial direct effect on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government. Executive Order 13132 requires no further action.

F. Review Under Executive Order 12988, ''Civil Justice Reform''

With respect to the review of existing regulations and the promulgation of new regulations, section 3(a) of Executive Order 12988, ''Civil Justice Reform,'' 61 FR 4729 (February 7, 1996), imposes on Federal agencies the duty to adhere to the following requirements: (1) Eliminate drafting errors and ambiguity; (2) write regulations to minimize litigation; (3) provide a clear legal standard for affected conduct rather than a general standard; and (4) promote simplification and burden reduction. Section 3(b) of Executive Order 12988 specifically requires that Executive agencies make every reasonable effort to ensure that the regulation: (1) Clearly specifies the preemptive effect, if any; (2) clearly specifies any effect on existing Federal law or regulation; (3) provides a clear legal standard for affected conduct

while promoting simplification and burden reduction; (4) specifies the retroactive effect, if any; (5) adequately defines key terms; and (6) addresses other important issues affecting clarity and general draftsmanship under any guidelines issued by the Attorney General. Section 3(c) of Executive Order 12988 requires Executive agencies to review regulations in light of applicable standards in sections 3(a) and 3(b) to determine whether they are met or it is unreasonable to meet one or more of them. DOE has completed the required review and determined that, to the extent permitted by law, this proposed rule meets the relevant standards of Executive Order 12988.

G. Review Under the Unfunded Mandates Reform Act of 1995

Title II of the Unfunded Mandates Reform Act of 1995 (UMRA) (Pub. L. 104–4) requires each Federal agency to assess the effects of Federal regulatory actions on State, local, and Tribal governments and the private sector. For a proposed regulatory action likely to result in a rule that may cause expenditures by State, local, and Tribal governments, in the aggregate, or by the private sector of $100 million or more in any one year (adjusted annually for inflation), section 202 of UMRA requires a Federal agency to publish a written statement that estimates the resulting costs, benefits, and other effects on the national economy. 2 U.S.C. 1532(a) and (b). The UMRA requires a Federal agency to develop an effective process to permit timely input by elected officers of State, local, and Tribal governments on a proposed ''significant intergovernmental mandate.'' The UMRA also requires an agency plan for giving notice and opportunity for timely input to small governments that may be affected before establishing a requirement that might significantly or uniquely affect them. On March 18, 1997, DOE published a statement of policy on its process for intergovernmental consultation under UMRA (62 FR 12820) (also available at *http://www.gc.doe.gov*). Today's proposed rule contains neither an intergovernmental mandate nor a mandate that may result in the expenditure of $100 million or more in any year, so these requirements under the Unfunded Mandates Reform Act do not apply.

H. Review Under the Treasury and General Government Appropriations Act of 1999

Section 654 of the Treasury and General Government Appropriations Act, 1999 (Pub. L. 105–277) requires Federal agencies to issue a Family Policymaking Assessment for any rule that may affect family well-being. Today's proposed rule would not have any impact on the autonomy or integrity of the family as an institution. Accordingly, DOE has concluded that it is unnecessary to prepare a Family Policymaking Assessment.

I. Review Under Executive Order 12630, ''Governmental Actions and Interference With Constitutionally Protected Property Rights''

The Department has determined, under Executive Order 12630, ''Governmental Actions and Interference with Constitutionally Protected Property Rights,'' 53 FR 8859 (March 18, 1988), that this rule would not result in any takings that might require compensation under the Fifth Amendment to the United States Constitution.

J. Review Under the Treasury and General Government Appropriations Act of 2001

Section 515 of the Treasury and General Government Appropriations Act of 2001 (44 U.S.C. 3516) provides for agencies to review most disseminations of information to the public under guidelines each agency establishes pursuant to general guidelines issued by OMB.'' OMB's guidelines were published at 67 FR 8452 (February 22, 2002); DOE's guidelines were published at 67 FR 62446 (October 7, 2002). The DOE has reviewed today's notice under the OMB and DOE guidelines and has concluded that it is consistent with applicable policies in those guidelines.

K. Review Under Executive Order 13211, ''Actions Concerning Regulations That Significantly Affect Energy Supply, Distribution, or Use''

Executive Order 13211, ''Actions Concerning Regulations That Significantly Affect Energy Supply, Distribution, or Use,'' 66 FR 28355 (May 22, 2001), requires Federal agencies to prepare and submit to the Office of Information and Regulatory Affairs (OIRA) of the Office of Management and Budget a Statement of Energy Effects for any proposed significant energy action. A ''significant energy action'' is defined as any action by an agency that promulgated a final rule or is expected to lead to promulgation of a final rule, and that: (1) Is a significant regulatory action under Executive Order 12866, or any successor order; and (2) is likely to have a significant adverse effect on the supply, distribution, or use of energy; or (3) is designated by the Administrator of OIRA as a significant energy action. For any proposed significant energy action, the agency must give a detailed statement of any adverse effects on energy supply, distribution, or use should the proposal be implemented, and reasonable alternatives to the action and their expected benefits on energy supply, distribution, and use. Because this proposed rule would not have a significant adverse effect on the supply, distribution, or use of energy, the rule is not a significant energy action. Accordingly, DOE has not prepared a Statement of Energy Effects.

L. Review Under Section 32 of the Federal Energy Administration (FEA) Act of 1974

Under section 301 of the Department of Energy Organization Act (Pub. L. 95–91), the Department of Energy must comply with section 32 of the Federal Energy Administration Act of 1974, as amended by the Federal Energy Administration Authorization Act of 1977. 15 U.S.C. 788. Section 32 provides, in essence that, where a proposed rule authorizes or requires use of commercial standards, the notice of proposed rulemaking must inform the public of the use and background of such standards. In addition, section 32(c) requires DOE to consult with the Department of Justice (DOJ) and the Federal Trade Commission (FTC) concerning the impact of the commercial or industry standards on competition.

The rules proposed in this notice incorporate certain commercial standards which EPCA requires as the basis for DOE's test procedures. These include testing standards referenced by ASHRAE, ENERGY STAR, ANSI, AHAM, ITE, ASTM, and ARI. ''The ENERGY STAR Testing Facility Guidance Manual: Building a Testing Facility and Performing the Solid Stat Test Method for ENERGY STAR Qualified Ceiling Fans,'' includes testing standards for the measurement of airflow efficiency of ceiling fans. The ''ENERGY STAR Program Requirements for RLFs,'' version 4.0, includes testing standards for the measurement of the efficacy of pin-based fluorescent lamps that are packaged with ceiling fan light kits. The ''ENERGY STAR Program Requirements for CFLs,'' version 3.0, includes testing standards for the measurement of the efficacy of ceiling fan light kits with medium screw-base lamps. ANSI/AHAM HRF–1–1979, ''Association of Home Appliance Manufacturers Standard for Household Refrigerators, Combination Refrigerator-Freezers, and Household Freezers,'' includes testing standards for the measurement of the minimum energy

factor for dehumidifiers. The ''ENERGY STAR Program Requirements for CFLs,'' August 9 version, includes testing standards for the measurement of the initial efficacy, lumen maintenance at 1000 hours, 40 percent of rate life, rapid cycle stress, and lamp life of medium base compact fluorescent lamps. ARI Standard 810–2003, ''Performance Rating of Commercial Ice Makers,'' and ASHRAE Standard 29–1988 (RA 2005), ''Methods of Testing Automatic Ice Makers,'' include testing standards for the measurement of the maximum energy use and the maximum condenser water use of commercial ice makers. ASTM Standard F2324–2003, ''Standard Test Method for Prerinse Spray Valves,'' includes testing standards for the measurement of the flow rate of commercial prerinse spray valves. The ''ENERGY STAR Program Requirements for Illuminated Exit Signs,'' version 2.0, include testing standards for the measurement of the input power demand for illuminated exit signs. The ''ENERGY STAR Program Requirements for Traffic Signals,'' version 1.1, and the ITE ''Vehicle Traffic Control Signal Heads: Light Emitting Diode (LED) Circular Signal Supplement,'' Part 2, 1985, include testing standards for the measurement of the maximum wattage and nominal wattage of traffic signal modules and pedestrian modules. ASHRAE Standard 32.1–2004, ''Methods of Testing for Rating Vending Machines for Bottled, Canned, and Other Sealed Beverages,'' include testing standards for the measurement of the daily energy consumption in beverage vending machines. ASHRAE Standard 72–2005, ''Method of Testing Commercial Refrigerators and Freezers,'' includes testing standards for the measurement of the daily energy consumption of certain commercial refrigerators, freezers, and refrigerator-freezers. In these instances, the Department has some discretion to depart from the ASHRAE, ENERGY STAR, ANSI, AHAM, ITE, ASTM, and ARI standards referenced in EPACT 2005, because the DOE test procedures must be ''reasonably designed to produce test results which measure energy efficiency, energy use, * * * or estimated annual operating cost * * * during a representative average use cycle or period of use, * * * and shall not be unduly burdensome to conduct.'' (42 U.S.C. 6293(b)(3), 42 U.S.C.6314(a)(2)) In addition, all DOE test procedures must be clear and complete so that they are understandable to manufacturers who must certify test results. DOE has reviewed these industry test standards to ensure that EPCA's statutory criteria are met and that DOE's proposals are clear and complete. Today's rule contains proposed test procedures based on the required test standards enumerated in EPACT 2005, with certain modifications that have been explained in this document. Because EPCA, not today's proposed rule, requires the use of these commercial standards, section 32 of the FEAA does not apply to them. DOE lacks any discretion not to use these standards as the basis of its regulations.

The only test standards incorporated in this proposed rule that are not referenced by EPACT 2005 are ARI Standard 1200–2006, ''Performance Rating of Commercial Refrigerated Display Merchandisers and Storage Cabinets,'' for the measurement of the energy consumption of ice -cream freezers, refrigerators, freezers, and refrigerator-freezers with a self-contained condensing unit and without doors, and commercial refrigerator, freezers, and refrigerator-freezers with a remote condensing unit; ARI Standard 340/360–2004, ''Performance Rating of Commercial and Industrial Unitary Air-Conditioning and Heat Pump Equipment,'' for the measurement of the energy efficiency ratio and coefficient of performance of certain commercial unitary air-conditioning and heat pump equipment; the ''ENERGY STAR Test Methodology for Determining the Energy Performance of Battery Charging Systems,'' December 2005; the IEEE Standard 1515–2000, ''IEEE Recommended Practice for Electronic Power Subsystems: Parameter Definitions, Test Conditions, and Test Methods,'' for the measurement of the energy consumption of battery chargers; the ''ENERGY STAR Test Method for Calculating the Energy Efficiency of Single-Voltage External Ac-Dc and Ac-Ac Power Supplies,'' August 11, 2004, for the measurement of the energy consumption of external power supplies; and the IESNA Standard LM 45–2000, ''Approved Method for Electrical and Photometric Measurements of General Service Incandescent Filament Lamps,'' for the measurement of the total wattage of ceiling fan light kits packaged with lamps other than medium-screw base and pin-based and torchieres. Although Congress in EPACT 2005 did not require DOE to use these industry test procedures as the basis for DOE's own test procedures, the Department believes that they offer a reasonable basis for constructing new DOE test procedures. However, the Department has evaluated these standards and is unable to conclude whether they fully comply with the requirements of section 32(b) of the Federal Energy Administration Act, (i.e., that they were developed in a manner that fully provides for public participation, comment and review). DOE will consult with the Attorney General and the Chairman of the FTC concerning the impact of these test procedures on competition, prior to prescribing a final rule.

VII. Public Participation

A. Attendance at Public Meeting

The time and date of the public meeting are listed in the **DATES** section at the beginning of this notice of proposed rulemaking. The public meeting will be held at the U.S. Department of Energy, Forrestal Building, Room 1E–245, 1000 Independence Avenue, SW., Washington, DC 20585–0121. To attend the public meeting, please notify Ms. Brenda Edwards-Jones at (202) 586–2945. Foreign nationals visiting DOE Headquarters are subject to advance security screening procedures, requiring a 30-day advance notice. Any foreign national wishing to participate in the meeting should contact Ms. Brenda Edwards-Jones as soon as possible to initiate the necessary procedures.

B. Procedure for Submitting Requests To Speak

Any person who has an interest in today's notice, or who is a representative of a group or class of persons that has an interest in these issues, may request an opportunity to make an oral presentation. Such persons may hand-deliver requests to speak, to the address shown in the **ADDRESSES** section at the beginning of this notice between 9 a.m. and 4 p.m., Monday through Friday, except Federal holidays. Requests may also be sent by mail or e-mail to: Ms. Brenda Edwards-Jones, U.S. Department of Energy, Building Technologies Program, Room 1J–018, 1000 Independence Avenue, SW., Washington, DC 20585–0121, or *Brenda.Edwards-Jones@ee.doe.gov*.

Persons who wish to speak should include a computer diskette or CD in WordPerfect, Microsoft Word, PDF, or text (ASCII) file format that briefly describes the nature of their interest in this rulemaking and the topics they wish to discuss, and provides a telephone number for contact. The Department requests that those persons who are selected to speak submit a copy of their statements at least two weeks before the public meeting. DOE may permit any person who cannot supply an advance copy to participate, if that

person has made alternative arrangements with the Building Technologies Program in advance. The request to give an oral presentation should ask for such alternative arrangements.

C. Conduct of Public Meeting

The Department will designate a DOE official to preside at the public meeting and may also employ a professional facilitator to aid discussion. The meeting will not be a judicial or evidentiary public hearing, but DOE will conduct it in accordance with 5 U.S.C. 553 and section 336 of EPCA, 42 U.S.C. 6306. A court reporter will record the proceedings and prepare a transcript. The Department reserves the right to schedule the order of presentations and to establish the procedures governing the conduct of the public meeting. After the public meeting, interested parties may submit further comments on the proceedings and on any aspect of the rulemaking until the end of the comment period.

At the public meeting, the Department will present summaries of comments received before the public meeting, allow time for presentations by participants, and encourage all interested parties to share their views on issues affecting this rulemaking. Each participant may present a prepared general statement (within time limits determined by DOE) before the discussion of specific topics. Other participants may comment briefly on any general statements.

At the end of all the prepared statements, participants may clarify their statements briefly and comment on statements made by others. Participants should be prepared to answer questions from DOE and other participants. Department representatives may also ask questions about other matters relevant to this rulemaking. The official conducting the public meeting will accept additional comments or questions from those attending, as time permits. The presiding official will announce any further procedural rules or modification of procedures needed for the proper conduct of the public meeting.

The Department will make the entire record of this proposed rulemaking, including the transcript from the public meeting, available for inspection at the U.S. Department of Energy, Forrestal Building, Room 1J–018 (Resource Room of the Building Technologies Program), 1000 Independence Avenue, SW., Washington, DC 20585–0121, (202) 586–9127, between 9:00 a.m. and 4 p.m., Monday through Friday, except Federal holidays. Anyone may purchase a copy of the transcript from the transcribing reporter.

D. Submission of Comments

The Department will accept comments, data, and information about the proposed rule no later than the date provided at the beginning of this notice. Please submit comments, data, and information electronically to *http://www.regulations.gov* or *testprocedures_EPACT2005@ee.doe.gov*. Please submit electronic comments in WordPerfect, Microsoft Word, PDF, or text (ASCII) file format, and avoid the use of special characters or any form of encryption. Comments in electronic format should be identified by the docket number EE-RM/TP–500 and/or RIN number 1904-AB53, and wherever possible carry the electronic signature of the author. Absent an electronic signature, comments submitted electronically must be followed and authenticated by submitting the signed original paper document. No telefacsimiles (faxes) will be accepted.

According to 10 CFR 1004.11, any person submitting information that he or she believes to be confidential and exempt by law from public disclosure should submit two copies: one copy of the document including all the information believed to be confidential, and one copy of the document without the information believed to be confidential. The Department of Energy will make its own determination about the confidential status of the information.

When determining whether to treat submitted information as confidential, the Department considers: (1) A description of the items; (2) whether and why such items are customarily treated as confidential within the industry; (3) whether the information is generally known by or available from other sources; (4) whether the information has previously been made available to others without obligation concerning its confidentiality; (5) whether the submitting person would suffer competitive injury from public disclosure; (6) when such information might lose its confidential character due to the passage of time; and (7) why disclosure of the information would be contrary to the public interest.

E. Issues on Which DOE Seeks Comment

EPACT 2005 requires certain test procedures by directive. However, in certain cases where EPACT 2005 has been unclear or refers to an ENERGY STAR test procedure as a basis for testing, it also allows some latitude for adopting the most recent version of the test procedure. In such cases, the Department is interested in receiving comments and data concerning the accuracy and workability of the test procedures in today's proposed rule. Also, because the proposed test procedures will become codified under either 10 CFR Part 430 or 10 CFR Part 431, and will be covered under sampling, certification, and other established regulatory protocols, the Department seeks comment on these matters. In particular, the Department invites comments on the following:

1. The Department proposes sampling procedures for consumer products that are consistent with the procedures set forth in 10 CFR Part 430, ''Units to be tested.'' The Department is also proposing sampling procedures for certain commercial and industrial equipment that are consistent with the methods used for consumer products. Is the Department's proposed approach to statistical sampling appropriate both for consumer products and commercial and industrial equipment? Are the sampling plans suggested for certain consumer products and commercial and industrial equipment accurate and workable? More specifically, are the proposed confidence limits and coefficients included for each of the products appropriate? See section IV.A for further details.

2. The Department is proposing to require that manufacturers provide a compliance statement and certification report on distribution transformers for which minimum efficiency standards are in effect. The Department specifically seeks comment on the certification report approach for distribution transformers that was adapted from electric motors. Will this proposed reporting regimen ensure compliance certification without imposing an undue reporting burden? See section IV.C for details.

3. Should the approach for determining certification and enforcement provisions under 10 CFR Part 430 for consumer products be applied to 10 CFR Part 431 for the commercial and industrial equipment? See section IV.B for details.

4. Should the Department revise the test procedure version specified by EPACT 2005 for ceiling fan light kits with pin-based sockets for fluorescent lamps to incorporate by reference the test procedures specified in the ''ENERGY STAR Program Requirements for RLFs,'' version 4.0? Would adopting version 4.0 reconcile the apparent inconsistency in the EPACT 2005 provisions for standards and test procedures? See section III.A.2 for details.

5. The Department is proposing to interpret the standards required by EPACT 2005 for ceiling fan light kits with sockets other than medium screw base or pin-based as energy efficiency requirements rather than design standards. Should the test procedures for these products be IESNA LM–45–00? See section III.A.2 for details.

6. Should the test procedure specified in EPACT 2005 for medium base CFLs be updated to the ''ENERGY STAR Program Requirements for CFLs,'' version 3.0, to obviate the need to test essentially the same product by two different testing methods? See sections III.A and III.C for details.

7. Can the terms ''lumen maintenance'' and ''lumen depreciation'' be interpreted as synonymous for the purposes of specifying and testing the photometric performance properties of medium base CFLs? See section III.C for details.

8. The Department is proposing to interpret the standards required by EPACT 2005 for torchieres as energy efficiency requirements. Should the test procedures for these products be IESNA LM–45–00? See section III.D for details.

9. Are there any technical reasons for developing requirements for maximum and nominal wattage in the test procedure for pedestrian modules that differ from the requirements for traffic signal modules? Are the proposed definitions describing the nominal and maximum wattage of traffic signal modules and pedestrian modules sufficient? See section III.I for details.

10. Section 135(b)(1) of EPACT 2005 prescribes test procedures for traffic signal and pedestrian modules that correspond to the VTCSH Part 2 (1985). The Department is proposing to adopt VTCSH Part 2 (1985). However, the Department recognizes that ITE recently published a new version of the VTCSH specifications (VTCSH (2005)). Should the Department revise the test procedure requirements to be consistent with the most current version of the ITE test procedures for these products, which is VTCSH (2005)? If so, the Department requests comment on the specific sections of VTCSH (2005) that would clarify the test requirements, specifically test conditions, for measuring the nominal and maximum wattage and can be specified in the rule language that accompanies the specifications in VTCSH (2005)? See section III.I for details.

11. Is the proposed test procedure, ARI Standard 1200–2006, sufficient for ice-cream freezers; commercial refrigerators, freezers, and refrigerator-freezers with a self contained condensing unit and without doors; and commercial refrigerators, freezers, and refrigerator-freezers with a remote condensing unit sufficient? In addition, is the proposed definition for ice-cream freezers sufficient? See section III.L for details.

12. The Department incorporated the full test duration (48 hours) from the ENERGY STAR test procedure for battery chargers and requests comments on this proposal. Is the Department's proposed scope of coverage for the battery charger test method appropriate, especially the power range of battery chargers of consumer products (2–300 watts)? Is it appropriate that the Department only require testing at the input voltage/frequency combination of 115 volts and 60 hertz? Finally, the Department proposes adding a requirement in section 3 of Appendix Y to Subpart B of Part 430 that addresses the capability of testing equipment to account for crest factor and frequency spectrum in the measurement, in addition to the other ENERGY STAR requirements specified in section 4.0 of the ENERGY STAR test methodology for battery chargers and request comments: ''The test equipment must be capable of accounting for crest factor and frequency spectrum in its measurement of the UUT input current.'' See section III.M.1 for details.

13. The Department seeks comments on the proposed scope of coverage for the external power supply test method, especially the nameplate-output power value of less than, or equal to, 250 watts. Are the loading points as defined by the ENERGY STAR test procedure for external power supplies, namely, 25 percent, 50 percent, 75 percent, and 100 percent of rated current output, sufficient? Should the Department only require testing at the input voltage/frequency combination of 115 volts and 60 hertz? See section III.M.2 for details.

14. Are there any other factors that the Department should consider when determining whether the incremental costs of complying with today's proposed test procedure rule would impose a significant economic impact on small businesses for the consumer products and commercial and industrial equipment specified in this proposed rule? See section IV.B for details.

VIII. Approval of the Office of the Secretary

The Secretary of Energy has approved publication of today's proposed rule.

List of Subjects

10 CFR Part 430

Administrative practice and procedure, Energy conservation test procedures, Household appliances, Incorporation by reference.

10 CFR Part 431

Administrative practice and procedure, Commercial products, Energy conservation test procedures, Incorporation by reference.

Issued in Washington, DC, on June 30, 2006.

Richard F. Moorer,

Deputy Assistant Secretary, Technology Development, Energy Efficiency and Renewable Energy.

For the reasons stated in the preamble, DOE proposes to amend Chapter II, Subchapter D, of Title 10 of the Code of Federal Regulations as set forth below:

PART 430—ENERGY CONSERVATION PROGRAM FOR CONSUMER PRODUCTS

1. The authority citation for part 430 continues to read as follows:

Authority: 42 U.S.C. 6291–6309; 28 U.S.C. 2461 note.

2. Section 430.2 is amended by:

a. Adding to the definition of ''basic model'' paragraphs (21) through (27).

b. Revising the definition of ''covered product.''

c. Adding in alphabetical order the definition of ''Battery charger,'' ''External power supply,'' and ''Pin-based.''

The revisions and additions read as follows:

§ 430.2 Definitions.

* * * * *

Basic model * * *

(21) With respect to ceiling fans, which have electrical characteristics that are essentially identical, and which do not have any differing physical or functional characteristics that affect energy consumption.

(22) With respect to ceiling fan light kits, which have electrical characteristics that are essentially identical, and which do not have differing physical or functional characteristics that affect energy consumption.

(23) With respect to medium base compact fluorescent lamps, which have electrical characteristics that are essentially identical, and which do not have any differing physical or functional characteristics that affect energy consumption.

(24) With respect to dehumidifiers, which have electrical characteristics that are essentially identical, and which do not have any differing physical or functional characteristics that affect energy consumption.

(25) With respect to battery chargers, which have electrical characteristics that are essentially identical, and which do not have any different physical or functional characteristics that affect energy consumption.

(26) With respect to external power supplies, which have electrical characteristics that are essentially identical, and which do not have any different physical or functional characteristics that affect energy consumption.

(27) With respect to torchieres, which have electrical characteristics that are essentially identical, and which do not have any different physical or functional characteristics that affect energy consumption.

* * * * *

Battery charger means a device that charges batteries for consumer products, including battery chargers embedded in other consumer products.

* * * * *

Covered product means a consumer product:

(1) Of a type specified in section 322 of the Act, or

(2) That is a ceiling fan, ceiling fan light kit, medium base compact fluorescent lamp, dehumidifier, battery charger, or external power supply.

* * * * *

External power supply means an external power supply circuit that is used to connect household electric current into DC current or lower-voltage AC current to operate a consumer product.

* * * * *

Pin-based means a fluorescent lamp with a plug-in lamp base, including multi-tube, multibend, spiral, and circline types.

* * * * *

3. Section 430.22 is amended by:

a. Adding new paragraphs (b)(1) 9., and 10.

b. Adding new paragraphs (b)(2) 8., 9., 10., 11., and 12.

c. Revising paragraph (b)(7).

d. Adding new paragraphs (b)(9), (b)(10), and (b)(11).

The revision and additions read as follows:

§ 430.22 Reference sources.

* * * * *

(b) * * *

(1) * * *

9. American National Standards Institute (ANSI) Standard C78.5–1997, ''Specifications for Performance of Self-Ballasted Compact Fluorescent Lamps.''

10. American National Standards Institute (ANSI) Standard C78.375–1997, ''Guide for Electrical Measurements of Fluorescent Lamps.''

(2) * * *

8. Illuminating Engineering Society of North America (IESNA) LM 9–1999, ''Electrical and Photometric Measurements of Fluorescent Lamps.''

9. Illuminating Engineering Society of North America (IESNA) LM 40–2001, ''Approved Method for Life Performance Testing of Fluorescent Lamps.''

10. Illuminating Engineering Society of North America (IESNA) LM 65–2001, ''Life Testing of Single-Ended Compact Fluorescent Lamps.''

11. Illuminating Engineering Society of North America (IESNA) LM 66–2000, ''Approved Method for the Electrical and Photometric Measurements of Single-Ended Compact Fluorescent Lamps.''

12. Illuminating Engineering Society of North America (IESNA) LM 45–2000, ''Approved Method for Electrical and Photometric Measurements of General Service Incandescent Filament Lamps.''

* * * * *

(7) Association of Home Appliance Manufacturers (AHAM), 1111 19th Street, NW., Suite 402, Washington, DC 20036, (202) 872–5955.

1. American National Standards Institute (ANSI)/AHAM DW–1–1992, ''Household Electric Dishwashers.''

* * * * *

(9) Environmental Protection Agency (EPA), Ariel Rios Building, 1200 Pennsylvania Avenue, NW., Washington, DC 20460, (202) 272–0167.

1. ''ENERGY STAR Testing Facility Guidance Manual: Building a Testing Facility and Performing the Solid State Test Method for ENERGY STAR Qualified Ceiling Fans,'' Version 1.1.

2. ''ENERGY STAR Program Requirements for Residential Light Fixtures,'' Version 4.0.

3. ''ENERGY STAR Program Requirements for Dehumidifiers,'' January 1, 2001.

4. ''Test Methodology for Determining the Energy Performance of Battery Charging Systems,'' December 2005.

5. ''Test Method for Calculating the Energy Efficiency of Single-Voltage External Ac-Dc and Ac-Ac Power Supplies,'' August 11, 2004.

(10) U.S. Department of Energy, Office of Energy Efficiency and Renewable Energy, Forrestal Building, Room 1J–018 (Resource Room of the Building Technologies Program), 1000 Independence Avenue, SW., Washington, DC 20585–0121, (202) 586–9127.

1. ''ENERGY STAR Program Requirements for Compact Fluorescent Lamps,'' Version 3.0.

2. ''ENERGY STAR Program Requirements for Compact Fluorescent Lamps,'' Version August 9, 2001.

(11) Institute of Electrical and Electronics Engineers (IEEE), 3 Park Avenue, 17th Floor, New York, NY 10016–5997, (212) 419–7900.

1. IEEE Std 1515–2000, ''IEEE Recommended Practice for Electronic Power Subsystems: Parameter Definitions, Test Conditions, and Test Methods.''

* * * * *

4. Section 430.23 is amended by revising the section heading, adding new paragraphs (w), (x), (y), (z), (aa), (bb), (cc) to read as follows:

§ 430.23 Test procedures for the measurement of energy and water consumption.

* * * * *

(w) *Ceiling fans.* The airflow and airflow efficiency for ceiling fans, expressed in cubic feet per minute (CFM) and CFM per watt (CFM/watt), respectively, shall be measured in accordance with section 4 of Appendix U of this subpart.

(x) *Ceiling fan light kits.* (1) The efficacy, expressed in lumens per watt (lumens/watt), for ceiling fan light kits with sockets for medium screw base lamps or pin-based fluorescent lamps shall be measured in accordance with section 4 of Appendix V of this subpart.

(2) The power consumption, expressed in watts (W), for ceiling fan light kits with sockets for lamps other than medium screw base lamps or pin-based fluorescent lamps shall be measured in accordance with section 4 of Appendix V of this subpart.

(y) *Medium Base Compact Fluorescent Lamps.* The initial efficacy, lumen maintenance at 1,000 hours, lumen maintenance at 40-percent of rated life, rapid cycle stress test, and lamp life shall be measured in accordance with section 4 of Appendix W of this subpart.

(z) *Dehumidifiers.* The energy factor for dehumidifiers, expressed in liters per kilowatt hour (L/kWh), shall be measured in accordance with section 4 of Appendix X of this subpart.

(aa) *Battery Chargers.* The energy consumption of a battery charger, expressed as the nonactive energy ratio, shall be measured in accordance with section 4 of Appendix Y of this subpart.

(bb) *External Power Supplies.* The energy consumption of an external power supply, which is a function of the active mode efficiency in a percentage, and the no-load energy consumption in watts, shall be measured in accordance with section 4 of Appendix Z of this subpart.

(cc) *Torchieres.* The power consumption for torchieres, expressed in watts (W), shall be measured in accordance with section 4 of Appendix AA of this subpart.

5. Section 430.24 is amended by revising the introductory paragraph and

by adding new paragraphs (w), (x), (y), (z), (aa), (bb), and (cc) to read as follows:

§ 430.24 Units to be tested.

When testing of a covered product is required to comply with section 323(c) of the Act, or to comply with rules prescribed under sections 324 or 325 of the Act, a sample shall be selected and tested comprised of units, or are representative of production units of the basic model being tested, and shall meet the following applicable criteria. Components of similar design may be substituted without requiring additional testing if the represented measures of energy consumption, or, in the case of showerheads, faucets, water closets and urinals, water use, continue to satisfy the applicable sampling provision.

* * * * *

(w) For each basic model of ceiling fan with sockets for medium screw base lamps or pin-based fluorescent lamps selected for testing, a sample of sufficient size shall be selected at random and tested to ensure that—

(1) Any represented value of estimated energy consumption or other measure of energy consumption of a basic model for which consumers would favor lower values shall be no less than the higher of;

(i) The mean of the sample, or

(ii) The upper 95 percent confidence limit of the true mean divided by 1.10, and

(2) Any represented value of the airflow efficiency or other measure of energy consumption of a basic model for which consumers would favor higher values shall be no greater than the lower of;

(i) The mean of the sample, or

(ii) The lower 95 percent confidence limit of the true mean divided by 0.90.

(x) For each basic model of ceiling fan light kit with sockets for medium screw base lamps or pin-based fluorescent lamps selected for testing, a sample of sufficient size shall be selected at random and tested to ensure that—

(1) Any represented value of estimated energy consumption or other measure of energy consumption of a basic model for which consumers would favor lower values shall be no less than the higher of;

(i) The mean of the sample, or

(ii) The upper 97.5 percent confidence limit of the true mean divided by 1.05, and

(2) Any represented value of the efficacy or other measure of energy consumption of a basic model for which consumers would favor higher values shall be no greater than the lower of;

(i) The mean of the sample, or

(ii) The lower 97.5 percent confidence limit of the true mean divided by 0.95.

(y) For each basic model of bare or covered (no reflector) medium base compact fluorescent lamp selected for testing, a sample of sufficient size shall be selected at random and tested to ensure that—

(1) Any represented value of estimated energy consumption or other measure of energy consumption of a basic model for which consumers would favor lower values shall be no less than the higher of;

(i) The mean of the sample, or

(ii) The upper 97.5 percent confidence limit of the true mean divided by 1.05, and

(2) Any represented value of the efficacy or other measure of energy consumption of a basic model for which consumers would favor higher values shall be no greater than the lower of;

(i) The mean of the sample, or

(ii) The lower 97.5 percent confidence limit of the true mean divided by 0.95.

(z) For each basic model of dehumidifier selected for testing, a sample of sufficient size shall be selected at random and tested to ensure that—

(1) Any represented value of estimated energy consumption or other measure of energy consumption of a basic model for which consumers would favor lower values shall be no less than the higher of;

(i) The mean of the sample, or

(ii) The upper 95 percent confidence limit of the true mean divided by 1.10, and

(2) Any represented value of the energy factor or other measure of energy consumption of a basic model for which consumers would favor higher values shall be no greater than the lower of;

(i) The mean of the sample, or

(ii) The lower 95 percent confidence limit of the true mean divided by 0.90.

(aa) For each basic model of battery charger selected for testing, a sample of sufficient size shall be selected at random and tested to ensure that—

(1) Any represented value of the estimated nonactive energy ratio or other measure of energy consumption of a basic model for which consumers would favor lower values shall be no less than the higher of;

(i) The mean of the sample, or

(ii) The upper 97.5 percent confidence limit of the true mean divided by 1.05, and

(2) Any represented value of the estimated nonactive energy ratio or other measure of energy consumption of a basic model for which consumers would favor higher values shall be no greater than the lower of;

(i) The mean of the sample, or

(ii) The lower 97.5 percent confidence limit of the true mean divided by 0.95.

(bb) For each basic model of external power supply selected for testing, a sample of sufficient size shall be selected at random and tested to ensure that—

(1) Any represented value of the estimated energy consumption of a basic model for which consumers would favor lower values shall be no less than the higher of;

(i) The mean of the sample, or

(ii) The upper 97.5 percent confidence limit of the true mean divided by 1.05, and

(2) Any represented value of the estimated energy consumption of a basic model for which consumers would favor higher values shall be no greater than the lower of;

(i) The mean of the sample, or

(ii) The lower 97.5 percent confidence limit of the true mean divided by 0.95.

(cc) For each basic model of torchiere selected for testing, a sample of sufficient size shall be selected at random and tested to ensure that—

(1) Any represented value of power consumption or other measure of energy consumption of a basic model for which consumers would favor lower values shall be no less than the higher of;

(i) The mean of the sample, or

(ii) The upper 97.5 percent confidence limit of the true mean divided by 1.05, and

(2) Any represented value of the energy consumption of a basic model for which consumers would favor higher values shall be no greater than the lower of;

(i) The mean of the sample, or

(ii) The lower 97.5 percent confidence limit of the true mean divided by 0.95.

6. Subpart B of Part 430 is amended by adding new Appendices U, V, W, X, Y, Z, and AA, to read as follows:

Appendix U to Subpart B of Part 430—Uniform Test Method for Measuring the Energy Consumption of Ceiling Fans

1. *Scope:* This appendix covers the test requirements used to measure the energy performance of ceiling fans.

2. *Definitions:*

a. *Airflow* means the rate of air movement at a specific fan-speed setting expressed in cubic feet per minute (CFM).

b. *Airflow efficiency* means the ratio of airflow divided by power at a specific ceiling fan-speed setting expressed in CFM per watt (CFM/watt).

3. *Test Apparatus and General Instructions:* The test apparatus and instructions for testing ceiling fans shall conform to the requirements specified in Chapter 3, ''Air-Delivery Room Construction and Preparation,'' Chapter 4, ''Equipment

Set-up and Test Procedure,'' and Chapter 6, ''Definitions and Acronyms,'' of the EPA's ''ENERGY STAR Testing Facility Guidance Manual: Building a Testing Facility and Performing the Solid State Test Method for ENERGY STAR Qualified Ceiling Fans,'' version 1.1, December 9, 2002 (see § 430.22). Record measurements at the resolution of the test instrumentation. Round off calculations to the same number of significant digits as the previous step. Round the final energy consumption value to the nearest whole number as follows:

(i) A fractional number at or above the midpoint between the two consecutive whole numbers shall be rounded up to the higher of the two whole numbers; or

(ii) A fractional number below the midpoint between the two consecutive whole numbers shall be rounded down to the lower of the two whole numbers.

4. *Test Measurement:* Measure the airflow and airflow efficiency for ceiling fans, expressed in cubic feet per minute (CFM) and CFM per watt (CFM/watt), in accordance with the test requirements specified in Section 4, ''Equipment Setup and Test Procedure,'' of the EPA's ''ENERGY STAR Testing Facility Guidance Manual: Building a Testing Facility and Performing the Solid State Test Method for ENERGY STAR Qualified Ceiling Fans,'' version 1.1, December 9, 2002 (see § 430.22). In performing the airflow test, measure ceiling fan power using a RMS sensor capable of measuring power with an accuracy of ±1 %. Prior to using the sensor and sensor software it has selected, the test laboratory shall verify their performance. Measure power input at a point that includes all power consuming components of the ceiling fan (but without any attached light kit energized). Measure power at the rated voltage that represents normal operation continuously over the time period for which the airflow test is conducted, and report the average value of the power measurement in watts (W). Use the average value of power input to calculate the airflow efficiency in CFM/W.

Appendix V to Subpart B of Part 430—Uniform Test Method for Measuring the Energy Consumption of Ceiling Fan Light Kits

1. *Scope:* This appendix covers the test requirements used to measure the energy performance of ceiling fan light kits.

2. *Definitions:*

a. *Input power* means the actual total power used by all lamp(s) and ballast(s) of the light fixture during operation, expressed in watts (W) and measured using the lamp and ballast packaged with the fixture.

b. *Lamp ballast platform* means a pairing of one ballast with one or more lamps that can operate simultaneously on that ballast. A unique platform is defined by the manufacturer and model number of the ballast and lamp(s) and the quantity of lamps that operate on the ballast.

c. *Lamp lumens* means a measurement of luminous flux expressed in lumens and measured using the lamp and ballast shipped with the fixture.

d. *System efficacy per lamp ballast platform* means the ratio of measured lamp lumens expressed in lumens and measured input power expressed in watts (W).

3. *Test Apparatus and General Instructions:*

(a) The test apparatus and instruction for testing screw base lamps packaged with ceiling fan light kits that have medium screw base sockets shall conform to the requirements specified in section 2, ''Definitions,'' section 3, ''Referenced Standards,'' and section 4, ''CFL Requirements for Testing'' of the DOE's ''ENERGY STAR Program Requirements for Compact Fluorescent Lamps,'' version 3.0, (see § 430.22). Record measurements at the resolution of the test instrumentation. Round off calculations to the same number of significant digits as the previous step. Round off the final energy consumption value to a whole number as follows:

(i) A fractional number at or above the midpoint between the two consecutive whole numbers shall be rounded up to the higher of the two whole numbers; or

(ii) A fractional number below the midpoint between the two consecutive whole numbers shall be rounded down to the lower of the two whole numbers.

(b) The test apparatus and instruction for testing pin-based fluorescent lamps packaged with ceiling fan light kits that have pin-based sockets shall conform to the requirements specified in section 1, ''Definitions,'' and section 3, ''Energy Efficiency Specifications for Qualifying Products'' of the EPA's ''ENERGY STAR Program Requirements for Residential Light Fixtures,'' version 4.0, (see § 430.22). Record measurements at the resolution of the test instrumentation. Round off calculations to the same number of significant digits as the previous step. The final energy consumption value shall be rounded to a whole number as follows:

(i) A fractional number at or above the midpoint between the two consecutive whole numbers shall be rounded up to the higher of the two whole numbers; or

(ii) A fractional number below the midpoint between the two consecutive whole numbers shall be rounded down to the lower of the two whole numbers.

(c) The test apparatus and instruction for testing ceiling fan light kits with sockets other than medium screw base and pin-based sockets for lamps shall conform to the requirements of section 1.2 ''Nomenclature and Definitions'', section 3.0 ''Power Source Characteristics'' for AC power only and section 7.0 ''Electrical Instrumentation'' of the IESNA's ''IESNA Approved Method for Electrical and Photometric Measurements of General Service Incandescent Filament Lamps'', LM–45–2000, (see § 430.22). Record measurements at the resolution of the test instrumentation. Round off calculations to the same number of significant digits as the previous step. The final energy consumption value shall be rounded to a whole number as follows:

(i) A fractional number at or above the midpoint between the two consecutive whole numbers shall be rounded up to the higher of the two whole numbers; or

(ii) A fractional number below the midpoint between the two consecutive whole numbers shall be rounded down to the lower of the two whole numbers.

4. *Test Measurement:*

(a) For screw base compact fluorescent lamps packaged with ceiling fan light kits that have medium screw base sockets, measure the efficacy, expressed in lumens per watt, in accordance with the test requirements specified in section 4, ''CFL Requirements for Testing,'' of the ''ENERGY STAR Program Requirements for Compact Fluorescent Lamps,'' version 3.0 (see § 430.22).

(b) For pin-based compact fluorescent lamps packaged with ceiling fan light kits that have pin-based sockets, measure the efficacy, expressed in lumens per watt, in accordance with the test requirements specified in section 3, ''Energy-Efficiency Specifications for Qualifying Products'' of the ''ENERGY STAR Program Requirements for Residential Light Fixtures,'' version 4.0 (see § 430.22).

(c) Measure the ceiling fan light kit, with sockets other than medium screw base and pin-based, input power, expressed in watts, in accordance with the test setup specified for AC voltage in section 4.0, ''Circuits'' of the IESNA's ''IESNA Approved Method for Electrical and Photometric Measurements of General Service Incandescent Filament Lamps,'' LM–45–2000 (see § 430.22), with the terminals of the voltmeter and potential element of the wattmeter connected to the input lead (''plug'') for a ceiling fan light kit. In other words, in figure 1(b) in section 4.0, the lamp (L) would be replaced by the ceiling fan light kit under test. If dimmable, ceiling fan light kits should be tested at maximum light output using all the lamps packaged with the ceiling fan light kit. The ceiling fan light kit shall be tested using a lamp or combination of lamps whose total wattage exceeds 190 watts.

Appendix W to Subpart B of Part 430—Uniform Test Method for Measuring the Energy Consumption of Medium Base Compact Fluorescent Lamps

1. *Scope:* This appendix covers the test requirements used to measure the initial efficacy, lumen maintenance at 1,000 hours, lumen maintenance at 40 percent of rated life, rapid cycle stress, and lamp life of medium base compact fluorescent lamps.

2. *Definitions:*

a. *Average rated life* means the length of time declared by the manufacturer at which 50 percent of any large number of units of a lamp reaches the end of their individual lives.

b. *Initial performance values* means the photometric and electrical characteristics of the lamp at the end of 100 hour of operation. Such values include the initial efficacy, the rated luminous flux and the rated lumen output.

c. *Lumen maintenance* means the luminous flux or lumen output at a given time in the life of the lamp and expressed as a percentage of the rated luminous flux or rated lumen output, respectively.

d. *Rated luminous flux or rated lumen output* means the initial lumen rating (100 hour) declared by the manufacturer, which consists of the lumen rating of a lamp at the end of 100 hours of operation.

e. *Rated supply frequency* means the frequency marked on the lamp.

f. *Rated voltage* means the voltage marked on the lamp.

g. *Rated wattage* means the wattage marked on the lamp.

h. *Self-ballasted compact fluorescent lamp* means a compact fluorescent lamp unit that incorporates, permanently enclosed, all elements that are necessary for the starting and stable operation of the lamp, and does not include any replaceable or interchangeable parts.

3. *Test Apparatus and General Instructions:* The test apparatus and instructions for testing medium base compact fluorescent lamps shall conform to the requirements specified in section 2, ''Definitions,'' section 3, ''Referenced Standards,'' and section 4, ''CFL Requirements for Testing,'' of the DOE's ''ENERGY STAR Program Requirements for Compact Fluorescent Lamps,'' version dated August 9, 2001 (see § 430.22). Record measurements at the resolution of the test instrumentation. Round off calculations to the same number of significant digits as the previous step. Round the final energy consumption value, as applicable, to the nearest decimal place or whole number as follows:

(i) A fractional number at or above the midpoint between two consecutive decimal places or whole numbers shall be rounded up to the higher of the two decimal places or whole numbers; or

(ii) A fractional number below the midpoint between two consecutive decimal places or whole numbers shall be rounded down to the lower of the two decimal places or whole numbers. Round the final initial efficacy to one decimal place. Round the final lumen maintenance at 1,000 hours to a whole number. Round the final lumen maintenance at 40 percent of rated life, the final rapid cycle stress, and the final lamp life for medium base compact fluorescent lamps to whole numbers.

4. *Test Measurement:* Measure the initial efficacy expressed in lumens per watt; lumen maintenance at 1,000 hours expressed in lumens; lumen maintenance at 40 percent of rated life expressed in lumens; rapid cycle stress expressed in the number of lamps that meet or exceed the minimum number of cycles; and lamp life expressed in hours in accordance with the test requirements specified in section 4, ''CFL Requirements for Testing'' of the DOE's ''ENERGY STAR Program Requirements for Compact Fluorescent Lamps,'' version dated August 9, 2001 (see § 430.22).

Appendix X to Subpart B of Part 430—Uniform Test Method for Measuring the Energy Consumption of Dehumidifiers

1. *Scope:* This appendix covers the test requirements used to measure the energy performance of dehumidifiers.

2. *Definitions:*

a. *Product capacity for dehumidifiers* means a measure of the ability of a dehumidifier to remove moisture from its surrounding atmosphere, measured in pints collected per 24 hours of continuous operation.

b. *Energy factor for dehumidifiers* means a measure of energy efficiency of a dehumidifier calculated by dividing the water removed from the air by the energy consumed, measured in liters per kilowatt hour (L/kWh).

3. *Test Apparatus and General Instructions:* The test apparatus and instructions for testing dehumidifiers shall conform to the requirements specified in section 1, ''Definitions,'' section 2, ''Qualifying Products,'' and section 4, ''Test Criteria,'' of the EPA's ''ENERGY STAR Program Requirements for Dehumidifiers'' (see § 430.22). Record measurements at the resolution of the test instrumentation. Round off calculations to the same number of significant digits as the previous step. Round the final minimum energy factor value to two decimal places as follows:

(i) A fractional number at or above the midpoint between two consecutive decimal places shall be rounded up to the higher of the two decimal places, or

(ii) A fractional number below the midpoint between two consecutive decimal places shall be rounded down to the lower of the two decimal places.

4. *Test Measurement:* Measure the energy factor for dehumidifiers, expressed in liters per kilowatt hour (L/kWh) and product capacity in pints per day (pints/day), in accordance with the test requirements specified in section 4, ''Test Criteria,'' of EPA's ''ENERGY STAR Program Requirements for Dehumidifiers'' (see § 430.22).

Appendix Y to Subpart B of Part 430—Uniform Test Method for Measuring the Energy Consumption of Battery Chargers

1. *Scope:* This appendix covers the test requirements used to measure the nonactive energy ratio of battery chargers. This test method applies to battery chargers with nameplate input power between 2 and 300 watts and that use household electronic current to charge rechargeable batteries less than 42 volts that may be either a battery charger with a detachable battery or battery pack, or a battery charger system functioning with a product or appliance that is powered by an integral battery. The test method applies to: motor-driven battery charged products; products whose principal output is heat, light, motion or movement of air; battery charging systems intended to replace standard sized primary alkaline cells (e.g., AAA, AA, C, 9-volt, etc); and other product with detachable batteries and stand-along battery chargers whose designs are not an external power supply.

2. *Definitions:* The following definitions are for the purposes of understanding terminology associated with the test method for measuring battery charger energy consumption. For clarity on any other terminology used in the test method, please refer to IEEE Standard 1515–2000.

a. *Accumulated nonactive energy* is the sum of the energy, in watt-hours, consumed by the battery charger in battery-maintenance mode and standby mode over time periods defined in the test procedure.

b. *Battery energy* is the energy, in watt-hours, delivered by the battery under the specified discharge conditions in the test procedure.

c. *Battery maintenance mode or maintenance mode* is the mode of operation when the battery charger is connected to the main electricity supply and the battery is fully charged, but is still connected to the charger.

d. *Energy ratio or nonactive energy ratio* means the ratio of the accumulated nonactive energy divided by the battery energy.

e. *Standby mode* means the mode of operation when the battery charger is connected to the main electricity supply and the battery is not connected to the charger.

3. *Test Apparatus and General Instructions:* The test apparatus, standard testing conditions, and instructions for testing battery chargers shall conform to the requirements specified in section 4.0, ''Standard Testing Conditions,'' of the EPA's ENERGY STAR ''Test Methodology for Determining the Energy Performance of Battery Charging Systems, December 2005.'' The test voltage specified in section 4.1.1 shall be 115 volts, 60 Hz. The battery charger should be tested using the full test methodology, which has a test duration of 48 hours. In section 4.3.1 Precision Requirements, append this sentence to the end: ''The test equipment must be capable of accounting for crest factor and frequency spectrum in its measurement of the UUT input current.''

4. *Test Measurement:* The measurement of the battery charger energy ratio shall conform to the requirements specified in section 5.0 of the EPA's ''Test Methodology for Determining the Energy Performance of Battery Charging Systems, December 2005'' (see § 430.22).

Appendix Z to Subpart B of Part 430—Uniform Test Method for Measuring the Energy Consumption of External Power Supplies

1. *Scope:* This appendix covers the test requirements used to measure the active mode efficiency and the no-load energy consumption of external power supplies. This test method applies to external power supplies that are sold with, or intended to be used with, a separate end-use consumer product that constitutes the primary load; are contained in a physical enclosure separate from the end-use product; are either hard-wired into the end-use product or otherwise connected to it; do not have batteries or battery packs that physically attach directly to the power supply unit; do not have both a selector switch for battery chemistry, and a state of charge indicator light or meter; are able to convert to only one output voltage at a time; and have nameplate output power less than or equal to 250 watts.

2. *Definitions:* The following definitions are for the purposes of understanding terminology associated with the test method for measuring external power supply energy consumption. For clarity on any other terminology used in the test method, please refer to IEEE Standard 1515–2000.

a. *Active mode* is the mode of operation when the external power supply is connected

to the main electricity supply and the output is connected to a load.

b. *Active mode efficiency* is the ratio, expressed as a percentage, of the total real output power produced by a power supply to the real input power required to produce it.

c. *No load mode* means the mode of operation when the external power supply is connected to the main electricity supply and the output is not connected to a load.

d. *Single voltage external AC–AC power supply* means an external power supply that is designed to convert line voltage AC input into lower voltage AC output and is able to convert to only one AC output voltage at a time.

e. *Single voltage external AC–DC power supply* means an external power supply that is designed to convert line voltage AC input into lower voltage DC output and is able to convert to only one DC output voltage at a time.

f. *Total harmonic distortion*, expressed as a percent, is the RMS value of an AC signal after the fundamental component is removed and interharmonic components are ignored, divided by the RMS value of the fundamental component.

g. *True power factor* is the ratio of the active, or real, power consumed in watts to the apparent power, drawn in volt-amperes.

3. *Test Apparatus and General Instructions:* The test apparatus, standard testing conditions, and instructions for testing external power supplies shall conform to the requirements specified in section 4, ''General Conditions for Measurement,'' of the EPA's ''Test Method for Calculating the Energy Efficiency of Single-Voltage External AC–DC and AC–AC Power Supplies,'' August 11, 2004. The test voltage specified in section 4.d, ''Test Voltage,'' shall only be 115 volts, 60 Hz.

4. *Test Measurement:* The measurement of the external power supply active mode efficiency and no-load energy consumption shall conform to the requirements specified in section 5.0 of the EPA's ''Test Method for Calculating the Energy Efficiency of Single-Voltage External AC–DC and AC–AC Power Supplies,'' August 11, 2004 (see § 430.22).

Appendix AA to Subpart B of Part 430—Uniform Test Method for Measuring the Energy Consumption of Torchieres

1. *Scope:* This appendix covers the test requirements used to measure the energy consumption of torchieres.

2. *Definitions:*

a. *Input power* means the actual total power used by all lamp(s) and ballast(s) of the torchiere during operation, expressed in watts (W).

3. *Test Apparatus and General Instructions:* The test apparatus and instruction for testing torchieres shall conform to the requirements of section 1.2 ''Nomenclature and Definitions,'' section 3.0 ''Power Source Characteristics'' for AC power only and section 7.0 ''Electrical Instrumentation'' of the IESNA's ''IESNA Approved Method for Electrical and Photometric Measurements of General Service Incandescent Filament Lamps,'' LM–45–2000, (see § 430.22). Record measurements at the resolution of the test instrumentation. Round off calculations to the same number of significant digits as the previous step. The final energy consumption value shall be rounded to a whole number as follows:

(i) A fractional number at or above the midpoint between the two consecutive whole numbers shall be rounded up to the higher of the two whole numbers; or

(ii) A fractional number below the midpoint between the two consecutive whole numbers shall be rounded down to the lower of the two whole numbers.

4. *Test Measurement:* Measure the torchiere input power, expressed in watts, in accordance with the test setup specified for AC voltage in section 4.0, ''Circuits'' of the IESNA's ''IESNA Approved Method for Electrical and Photometric Measurements of General Service Incandescent Filament Lamps,'' LM–45–2000 (see § 430.22), with the terminals of the voltmeter and potential element of the wattmeter connected to the input lead (''plug'') for a torchiere. In other words, in figure 1(b) in section 4.0, the lamp (L) would be replaced by the torchiere under test. The torchiere shall be tested using a lamp or combination of lamps whose total wattage exceeds 190 watts.

7. Section 430.62 is amended by adding new paragraphs (a)(4)(xviii), (a)(4)(xix), (a)(4)(xx), and (a)(4)(xxi) to read as follows:

§ 430.62 Submission of data.

(a) * * *

(4) * * *

(xviii) Ceiling fan light kits with sockets for medium screw base lamps or pin-based fluorescent lamps, the efficacy in lumens per watt.

(xix) Medium base compact fluorescent lamps, the minimum initial efficacy in lumens per watt, the lumen maintenance at 1,000 hours in lumens, the lumen maintenance at 40 percent of rated life in lumens, the rapid cycle stress test, and the lamp life in hours.

(xx) Dehumidifiers, the energy factor in liters per kilowatt hour, and capacity in pints per day.

(xxi) Torchieres, the power consumption in watts.

* * * * *

PART 431—ENERGY EFFICIENCY PROGRAM FOR CERTAIN COMMERCIAL AND INDUSTRIAL EQUIPMENT

8. The authority citation for part 431 continues to read as follows:

Authority: 42 U.S.C. 6291–6317.

9. Section 431.2 is amended by revising the definition of ''Covered equipment,'' and adding, in alphabetical order, the definition of ''Energy conservation standard'' to read as follows:

§ 431.2 Definitions.

* * * * *

Covered equipment means any electric motor, as defined in § 431.12; commercial heating, ventilating, and air conditioning, and water heating product (HVAC & WH product), as defined in §§ 431.172; commercial refrigerator, freezer, or refrigerator-freezer, as defined in § 431.62; automatic commercial ice maker, as defined in § 431.132; commercial clothes washer, as defined in § 431.152; distribution transformer, as defined in § 431.192; illuminated exit sign, as defined in § 431.202; traffic signal module or pedestrian module, as defined in § 431.222; unit heater, as defined in § 431.242; commercial prerinse spray valve, as defined in § 431.262; mercury vapor lamp ballast, as defined in § 431.282; or refrigerated bottled or canned beverage vending machine, as defined in § 431.292.

* * * * *

Energy conservation standard means:

(1) A performance standard that prescribes a minimum level of energy efficiency or in the case of commercial prerinse spray valves, water use, or a maximum quantity of energy use for covered equipment; or

(2) A design requirement for covered equipment.

* * * * *

10. Section 431.62 is amended by adding, in alphabetical order, new definitions for ''Basic model,'' ''Ice-cream freezer,'' and ''Test package,'' to read as follows:

§ 431.62 Definitions concerning commercial refrigerators, freezers, and refrigerator-freezers.

Basic model means, with respect to commercial refrigerators, freezers, and refrigerator-freezers, all units of a given type of commercial refrigerator, freezer, or refrigerator-freezer (or class thereof) manufactured by one manufacturer that have the same primary energy source, which have electrical characteristics that are essentially identical, and which do not have any differing electrical, physical, or functional characteristics that affect energy consumption.

* * * * *

Ice-cream freezer means a commercial freezer that is designed to operate at or below -5°F (-21°C) and that the manufacturer designs, markets, or intends for the storing, displaying, or dispensing of ice cream.

* * * * *

Test package means a packaged material that is used as a standard product temperature-measuring device.

11. Subpart C of Part 431 is amended by revising the undesignated center

heading following § 431.62 and adding new §§ 431.63, 431.64, and 431.65, to read as follows:

Test Procedures

§ 431.63 Materials incorporated by reference.

(a) *General.* The Department incorporates by reference the following test procedures into Subpart C of Part 431. The Director of the Federal Register has approved the material listed in paragraph (b) of this section for incorporation by reference in accordance with 5 U.S.C. 552(a) and 1 CFR Part 51. Any subsequent amendment to this material by the standard-setting organization will not affect the DOE test procedures unless DOE amends its test procedures. The Department incorporates the material as it exists on the date of the approval by the **Federal Register** and a notice of any change in the material will be published in the **Federal Register**

(b) *Test procedures incorporated by reference.* (1) American Society of Heating, Refrigerating, and Air-Conditioning Engineers (ASHRAE) Standard 72–2005, ''Method of Testing Commercial Refrigerators and Freezers.''

(2) American National Standards Institute (ANSI)/Association of Home Appliance Manufacturers (AHAM) Standard HRF–1–1979, ''Association of Home Appliance Manufacturers Standard for Household Refrigerators, Combination Refrigerator-Freezers, and Household Freezers.''

(3) Air-Conditioning and Refrigeration Institute (ARI) Standard 1200–2006, ''Performance Rating of Commercial Refrigerated Display Merchandisers and Storage Cabinets.''

(c) *Availability of references.* (1) *Inspection of test procedures.* The test procedures incorporated by reference are available for inspection at:

(i) National Archives and Records Administration (NARA). For information on the availability of this material at NARA, call (202) 741–6030, or go to: *http://www.archives.gov/federal_register/code_of_federal_regulations/ibr_locations.html.*

(ii) U.S. Department of Energy, Forrestal Building, Room 1J–018 (Resource Room of the Building Technologies Program), 1000 Independence Avenue, SW., Washington, DC 20585–0121, (202) 586–9127, between 9 a.m. and 4 p.m., Monday through Friday, except Federal holidays.

(2) *Obtaining copies of standards.* (i) Anyone can purchase a copy of ASHRAE Standard 72–2005, ''Method of Testing Commercial Refrigerators and Freezers,'' from the American Society of Heating, Refrigerating and Air-Conditioning Engineers, Inc., 1791 Tullie Circle, NE, Atlanta, GA 30329, (404) 636–8400, or *http://www.ashrae.org.*

(ii) Anyone can purchase a copy of ANSI/AHAM Standard HRF–1–1979, ''Association of Home Appliance Manufacturers Standard for Household Refrigerators, Combination Refrigerator-Freezers, and Household Freezers,'' from the American National Standards Institute, 1819 L Street, NW., 6th floor, Washington, DC 20036, (202) 293–8020, or *http://www.ansi.org.*

(iii) Anyone can obtain a copy of ARI Standard 1200–2006, ''Performance Rating of Commercial Refrigerated Display Merchandisers and Storage Cabinets,'' from the Air-Conditioning and Refrigeration Institute, 4100 N. Fairfax Dr., Suite 200, Arlington, VA 22203 or *http://www.ari.org/std/standards.html.*

§ 431.64 Uniform test method for the measurement of energy consumption of commercial refrigerators, freezers, and refrigerator-freezers.

(a) *Scope.* This section provides the test procedures for measuring, pursuant to EPCA, the daily energy consumption in kilowatt hours per day (kWh/day) for a given product category and volume or total display area of commercial refrigerators, freezers, and refrigerator-freezers.

(b) *Testing and calculations.* (1) Determine the daily energy consumption of each covered commercial refrigerator, freezer, or refrigerator-freezer, other than those described in paragraph (b)(2) of this section, by conducting the test procedure, set forth in the American Society of Heating, Refrigerating, and Air-Conditioning Engineers (ASHRAE) Standard 72–2005, ''Method of Testing Commercial Refrigerators and Freezers,'' section 3, ''Definitions,'' section 4, ''Test Conditions,'' section 5, ''Instruments,'' section 6, ''Apparatus,'' section 7, ''Test Procedure,'' and section 8, ''Calculations.''

(2) Determine the daily energy consumption of each ice-cream freezer, commercial refrigerator, freezer, or refrigerator-freezer with a self-contained condensing unit and without doors, or commercial refrigerator, freezer, or refrigerator-freezer with a remote condensing unit, by conducting the test procedure set forth in the Air-Conditioning and Refrigeration Institute (ARI) Standard 1200–2006, ''Performance Rating of Commercial Refrigerated Display Merchandisers and Storage Cabinets,'' section 3, ''Definitions,'' section 4, ''Test Requirements,'' section 5, ''Rating Requirements for Remote Commercial Refrigerated Display Merchandisers and Storage Cabinets,'' section 6, ''Rating Requirements for Self-contained Commercial Refrigerated Display Merchandisers and Storage Cabinets,'' and section 7, ''Symbols and Subscripts.'' For each commercial refrigerator, freezer, or refrigerator-freezer with a self-contained condensing unit and without doors, also use ARI Standard 1200–2006, section 6, ''Rating Requirements for Self-contained Commercial Refrigerated Display Merchandisers and Storage Cabinets.'' For each commercial refrigerator, freezer, or refrigerator-freezer with a remote condensing unit, also use ARI Standard 1200–2006, section 5, ''Rating Requirements for Remote Commercial Refrigerated Display Merchandisers and Storage Cabinets.''

(3) Conduct the testing required in paragraphs (b)(1) and (b)(2) of this section, and determine the daily energy consumption, at the applicable integrated average temperature in the following table. The integrated average temperature is determined using the required test method.

Category	Test procedure	Integrated average temperatures
(i) Refrigerator with Solid Door(s)	ASHRAE Standard 72–2005.	38 °F (±2 °F).
(ii) Refrigerator with Transparent Door(s)	ASHRAE Standard 72–2005.	38 °F (±2 °F).
(iii) Freezer with Solid Door(s)	ASHRAE Standard 72–2005.	0 °F (±2 °F).
(iv) Freezer with Transparent Door(s)	ASHRAE Standard 72–2005.	0 °F (±2 °F).

Category	Test procedure	Integrated average temperatures
(v) Refrigerator-Freezer with Solid Door(s)	ASHRAE Standard 72–2005.	38 °F (±2 °F) for refrigerator compartment 0 °F (±2 °F) for freezer compartment.
(vi) Commercial Refrigerator with a Self-Contained Condensing Unit Designed for Pull-Down Temperature Applications and Transparent Doors.	ASHRAE Standard 72–2005.	38 °F (±2 °F).
(vii) Ice-Cream Freezer	ARI Standard 1200–2006 ..	−5.0 °F (±2 °F).
(viii) Commercial Refrigerator, Freezer, and Refrigerator-Freezer with a Self-Contained Condensing Unit and without Doors.	ARI Standard 1200–2006 ..	(A) For low temperature applications, the integrated average temperature of all test package averages shall be 0 °F (±2 °F). (B) For medium temperature applications, the integrated average temperature of all test package averages shall be 38.0 °F (±2 °F).
(ix) Commercial Refrigerator, Freezer, and Refrigerator-Freezer with a Remote Condensing Unit.	ARI Standard 1200–2006 ..	(A) For low temperature applications, the integrated average temperature of all test package averages shall be 0 °F (±2 °F). (B) For medium temperature applications, the integrated average temperature of all test package averages shall be 38.0 °F (±2 °F).

(4) Determine the volume of each covered commercial refrigerator, freezer, or refrigerator-freezer, other than those described in paragraph (b)(2) of this section, by conducting the test procedure set forth in the ANSI/AHAM Standard HRF–1–1979, section 3.20, sections 4.2 through 4.3, and sections 5.1 through 5.3.

§ 431.65 Units to be tested.

For each basic model of commercial refrigerator, freezer, or refrigerator-freezer selected for testing, a sample of sufficient size shall be selected at random and tested to ensure that (Components of similar design may be substituted without requiring additional testing if the represented measures of energy continue to satisfy the applicable sampling provision.)—

(a) Any represented value of estimated energy consumption or other measure of energy consumption of a basic model for which consumers would favor lower values shall be no less than the higher of:

(1) The mean of the sample; or

(2) The upper 95 percent confidence limit of the true mean divided by 1.10; and

(b) Any represented value of the energy efficiency or other measure of energy consumption of a basic model for which consumers would favor higher values shall be no greater than the lower of;

(1) The mean of the sample; or

(2) The lower 95 percent confidence limit of the true mean divided by 0.90.

12. Section 431.95 is amended by revising paragraph (b)(2) to read as follows:

§ 431.95 Materials incorporated by reference.

* * * * *

(b) * * *

(2) ARI Standard 340/360–2004 published in 2004, ''Performance Rating of Commercial and Industrial Unitary Air-Conditioning and Heat Pump Equipment,'' IBR approved for § 431.96.

* * * * *

13. Section 431.96 is revised to read as follows:

§ 431.96 Uniform test method for the measurement of energy efficiency of small, large, and very large commercial package air conditioning and heating equipment, packaged terminal air conditioners, and packaged terminal heat pumps.

(a) Scope. This section contains test procedures that must be followed for measuring, pursuant to EPCA, the energy efficiency of any small, large, or very large commercial package air conditioning and heating equipment, packaged terminal air conditioner, or packaged terminal heat pump.

(b) Testing and calculations. Determine the energy efficiency of each covered product by conducting the test procedure(s) listed in the rightmost column of Table 1 of this section, that apply to the energy efficiency descriptor for that product, category, and cooling capacity.

TABLE 1 TO § 431.96.—TEST PROCEDURES FOR ALL SMALL COMMERCIAL PACKAGE AIR-CONDITIONING AND HEATING EQUIPMENT, FOR LARGE COMMERCIAL PACKAGE AIR CONDITIONING AND HEATING EQUIPMENT, FOR VERY LARGE COMMERCIAL PACKAGE AIR CONDITIONING AND HEATING EQUIPMENT, AND FOR PACKAGED TERMINAL AIR CONDITIONERS, AND PACKAGED TERMINAL HEAT PUMPS

Product	Category	Cooling capacity	Energy efficiency descriptor	Use tests, conditions and procedures [1] in
Small Commercial Packaged Air Conditioning and Heating Equipment.	Air Cooled, 3 Phase, AC and HP.	<65,000 Btu/h	SEER	ARI Standard 210/240–2003
			HSPF	ARI Standard 210/240–2003
	Air Cooled AC and HP	≥65,000 Btu/h and <135,000 Btu/h.	EER	ARI Standard 340/360–2004
			COP	ARI Standard 340/360–2004
	Water Cooled and Evaporatively Cooled AC.	<65,000 Btu/h	EER	ARI Standard 210/240–2003
		≥65,000 Btu/h and <135,000 Btu/h.	EER	ARI Standard 340/360–2004
	Water-Source HP	<135,000 Btu/h	EER	ISO Standard 13256–1 (1998)
			COP	ISO Standard 13256–1 (1998)
Large Comercial Packaged Air Conditioning and Heating Equipment.	Air Cooled AC and HP	≥135,000 Btu/h and <240,000 Btu/h.	EER	ARI Standard 340/360–2004
	Water Cooled AC		COP	ARI Standard 340/360–2004
		≥135,000 Btu/h and <240,000 Btu/h.	EER	ARI Standard 340/360–2004

TABLE 1 TO § 431.96.—TEST PROCEDURES FOR ALL SMALL COMMERCIAL PACKAGE AIR-CONDITIONING AND HEATING EQUIPMENT, FOR LARGE COMMERCIAL PACKAGE AIR CONDITIONING AND HEATING EQUIPMENT, FOR VERY LARGE COMMERCIAL PACKAGE AIR CONDITIONING AND HEATING EQUIPMENT, AND FOR PACKAGED TERMINAL AIR CONDITIONERS, AND PACKAGED TERMINAL HEAT PUMPS—Continued

Product	Category	Cooling capacity	Energy efficiency descriptor	Use tests, conditions and procedures [1] in
	Evaporatively Cooled AC ...	≥135,000 Btu/h and <240,000 Btu/h.	EER	ARI Standard 340/360–2004
Very Large Commercial Packaged Air Conditioning and Heating Equipment.	Air Cooled AC and HP	≥240,000 Btu/h and <760,000 Btu/h.	EER	ARI Standard 340/360–2004
			COP	ARI Standard 340/360–2004
Packaged Terminal Air Conditioners and Heat Pumps.	AC and HP	All	EER	ARI Standard 310/380–2004
	HP	All	COP	ARI Standard 310/380–2004

[1] Incorporated by reference, see § 431.95.

* * * * *

14. Section 431.132 is amended by adding in alphabetical order new definitions for ''Basic model,'' ''Cube type ice,'' ''Energy use,'' ''Ice-making head,'' ''Maximum condenser water use,'' ''Remote compressor,'' ''Remote condensing,'' and ''Self-contained'' to read as follows:

§ 431.132 Definitions concerning automatic commercial ice makers.

* * * * *

Basic model means, with respect to automatic commercial ice makers, all units of a given type of automatic commercial ice maker (or class thereof) manufactured by one manufacturer and which have the same primary energy source, which have electrical characteristics that are essentially identical, and which do not have any differing electrical, physical, or functional characteristics that affect energy consumption.

Cube type ice means ice that is fairly uniform, hard, solid, usually clear, and generally weighs less than two ounces (60 grams) per piece, as distinguished from flake, crushed, or fragmented ice.

Energy use means the total energy consumed, stated in kilowatt hours per one-hundred pounds (kWh/100 lb) of ice and stated in multiples of 0.1. For remote condensing automatic commercial ice makers, total energy consumed shall include condenser fan power. * * *

Ice-making head means automatic commercial ice makers that do not contain integral storage bins, but are generally designed to accommodate a variety of bin capacities. Storage bins entail additional energy use not included in the reported energy consumption figures for these units.

Maximum condenser water use means the maximum amount of water used by the condensing unit (if water-cooled), stated in gallons per 100 pounds (gal/100 lb) of ice, in multiples of 1.

Remote compressor means a type of automatic commercial ice maker in which the ice-making mechanism and compressor are in separate sections.

Remote condensing means a type of automatic commercial ice maker in which the ice-making mechanism and condenser or condensing unit are in separate sections.

Self-contained means a type of automatic commercial ice maker in which the ice-making mechanism and storage compartment are in an integral cabinet.

15. Subpart H of Part 431 is amended by revising the undesignated center heading following § 431.132 and adding new §§ 431.133, 431.134, and 431.135, to read as follows:

Test Procedures

§ 431.133 Materials incorporated by reference.

(a) *General.* The Department incorporates by reference the following test procedures into Subpart H of Part 431. The Director of the Federal Register has approved the material listed in paragraph (b) of this section for incorporation by reference in accordance with 5 U.S.C. 552(a) and 1 CFR Part 51. Any subsequent amendment to this material by the standard-setting organization will not affect the DOE test procedures unless DOE amends its test procedures. The Department incorporates the material as it exists on the date of the approval by the **Federal Register** and a notice of any change in the material will be published in the **Federal Register**.

(b) *Test procedures incorporated by reference.* (1) Air-Conditioning and Refrigeration Institute (ARI) Standard 810–2003, ''Performance Rating of Commercial Ice-Makers.''

(2) American Society of Heating, Refrigerating and Air-Conditioning Engineers (ASHRAE) Standard 29–1988 (RA 2005), ''Methods of Testing Automatic Ice Makers.''

(c) *Availability of references.* (1) *Inspection of test procedures.* The test procedures incorporated by reference are available for inspection at:

(i) National Archives and Records Administration (NARA). For information on the availability of this material at NARA, call (202) 741–6030, or go to: *http://www.archives.gov/federal_register/code_of_federal_regulations/ibr_locations.html.*

(ii) U.S. Department of Energy, Forrestal Building, Room 1J–018 (Resource Room of the Building Technologies Program), 1000 Independence Avenue, SW., Washington, DC 20585–0121, (202) 586–9127, between 9 a.m. and 4 p.m., Monday through Friday, except Federal holidays.

(2) *Obtaining copies of test procedures.* (i) Anyone can obtain a copy of ARI Standard 810–2003 from the Air-Conditioning and Refrigeration Institute, 4100 N. Fairfax Dr., Suite 200, Arlington, VA 22203 or *http://www.ari.org/std/standards.html.*

(ii) Anyone can purchase a copy of ASHRAE Standard 29–1988 (RA 2005), ''Methods of Testing Automatic Ice Makers,'' from the American Society of Heating, Refrigerating and Air-Conditioning Engineers, Inc., 1791 Tullie Circle, NE, Atlanta, GA 30329, (404) 636–8400, or *http://www.ashrae.org.*

§ 431.134 Uniform test methods for the measurement of energy consumption and water consumption of automatic commercial ice makers.

(a) *Scope.* This section provides the test procedures for measuring, pursuant to EPCA, the energy use in kilowatt

hours per 100 pounds of ice (kWh/100 lbs ice) and the condenser water use in gallons per 100 pounds of ice (gal/100 lbs ice).

(b) *Testing and Calculations.* Determine the energy consumed and the condenser water use rate of each covered product by conducting the test procedures, set forth in the Air-Conditioning and Refrigeration Institute's Standard 810–2003, ''Performance Rating of Automatic Commercial Ice-Makers,'' section 4, ''Test Requirements,'' and section 5, ''Rating Requirements.'' Do not use the formula in Standard 810–2003 for calculating energy use, but instead calculate the energy use rate (kWh/100 lbs Ice) by dividing the energy consumed during testing by the total mass of the ice produced during the time period over which energy consumption is measured, normalized to 100 pounds of ice as follows:

$$\text{Energy Consumption Rate (per 100 lbs ice)} = \frac{\text{Energy Consumed During Testing (kWh)}}{\text{Total Mass of Ice Collected During Testing (lbs)}} \times 100\%$$

§ 431.135 Units to be tested.

For each basic model of automatic commercial ice maker selected for testing, a sample of sufficient size shall be selected at random and tested to ensure that (Components of similar design may be substituted without requiring additional testing if the represented measures of energy continue to satisfy the applicable sampling provision.)—

(a) Any represented value of estimated maximum energy use or other measure of energy consumption of a basic model for which consumers would favor lower values shall be no less than the higher of ;

(1) The mean of the sample; or

(2) The upper 95 percent confidence limit of the true mean divided by 1.10; and

(b) Any represented value of the energy efficiency or other measure of energy consumption of a basic model for which consumers would favor higher values shall be no greater than the lower of;

(1) The mean of the sample; or

(2) The lower 95 percent confidence limit of the true mean divided by 0.90.

16. Section 431.202 is amended by adding in alphabetical order new definitions for ''Basic model,'' ''Face,'' and ''Input power demand'' to read as follows:

§ 431.202 Definitions concerning illuminated exit signs.

Basic model means, with respect to illuminated exit signs, all units of a given type of illuminated exit sign (or class thereof) manufactured by one manufacturer and which have the same primary energy source, which have electrical characteristics that are essentially identical, and which do not have any differing electrical, physical, or functional characteristics that affect energy consumption.

Face means an illuminated side of an illuminated exit sign.

* * * * *

Input power demand means the amount of power required to continuously illuminate an exit sign model, measured in watts (W). For exit sign models with rechargeable batteries, input power demand shall be measured with batteries at full charge.

17. Subpart L of Part 431 is amended by revising the undesignated center heading following § 431.202 and adding new §§ 431.203, 431.204, and 431.205, to read as follows:

Test Procedures

§ 431.203 Materials incorporated by reference.

(a) *General.* The Department incorporates by reference the following test procedures into subpart L of part 431. The Director of the Federal Register has approved the material listed in paragraph (b) of this section for incorporation by reference in accordance with 5 U.S.C. 552(a) and 1 CFR part 51. Any subsequent amendment to this material by the standard-setting organization will not affect the DOE test procedures unless and until DOE amends its test procedures. The Department incorporates the material as it exists on the date of the approval by the **Federal Register** and a notice of any change in the material will be published in the **Federal Register**.

(b) *Test procedures incorporated by reference.* Environmental Protection Agency ''ENERGY STAR Program Requirements for Exit Signs,'' Version 2.0.

(c) *Availability of references.* (1) *Inspection of test procedures.* The test procedures incorporated by reference are available for inspection at:

(i) National Archives and Records Administration (NARA). For information on the availability of this material at NARA, call (202) 741–6030, or go to: *http://www.archives.gov/federal_register/code_of_federal_regulations/ibr_locations.html;*

(ii) U.S. Department of Energy, Forrestal Building, Room 1J–018 (Resource Room of the Building Technologies Program), 1000 Independence Avenue, SW., Washington, DC 20585–0121, (202) 586–9127, between 9 a.m. and 4 p.m., Monday through Friday, except Federal holidays.

(2) *Obtaining copies of standards.* Copies of the Environmental Protection Agency ''ENERGY STAR Program Requirements for Exit Signs,'' version 2.0, may be obtained from the Environmental Protection Agency, Ariel Rios Building, 1200 Pennsylvania Avenue, NW., Washington, DC 20460, (202) 272–0167 or at *http://www.epa.gov.*

§ 431.204 Uniform test method for the measurement of energy consumption of illuminated exit signs.

(a) *Scope.* This section provides the test procedure for measuring, pursuant to EPCA, the input power demand of illuminated exit signs. For purposes of this part 431 and EPCA, the test procedure for measuring the input power demand of illuminated exit signs shall be the test procedure specified in § 431.205(b).

(b) *Testing and calculations.* Determine the energy efficiency of each covered product by conducting the test procedure, set forth in the Environmental Protection Agency's ''ENERGY STAR Program Requirements for Exit Signs,'' version 3.0, section 4 (Test Criteria), ''Conditions for testing'' and ''Input power measurement.'' The test duration shall be sufficient to allow the determination of true RMS input power with an uncertainty of ±1 %.

§ 431.205 Units to be tested.

For each basic model of illuminated exit sign selected for testing, a sample of sufficient size shall be selected at random and tested to ensure (Components of similar design may be substituted without requiring additional testing if the represented measures of energy continue to satisfy the applicable sampling provision.)

(a) Any represented value of estimated input power demand or other measure of energy consumption of a basic model for which consumers would

favor lower values shall be no less than the higher of:

(1) The mean of the sample, or

(2) The upper 95 percent confidence limit of the true mean divided by 1.10, and

(b) Any represented value of the energy efficiency or other measure of energy consumption of a basic model for which consumers would favor higher values shall be no greater than the lower of:

(1) The mean of the sample, or

(2) The lower 95 percent confidence limit of the true mean divided by 0.90.

18. Section 431.222 is amended by adding in alphabetical order new definitions for ''Basic model,'' ''Maximum wattage,'' and ''Nominal wattage,'' to read as follows:

§ 431.222 Definitions concerning traffic signal modules and pedestrian modules.

Basic model means, with respect to traffic signal modules and pedestrian modules, all units of a given type of traffic signal module or pedestrian module (or class thereof) manufactured by one manufacturer and which have the same primary energy source, which have electrical characteristics that are essentially identical, and which do not have any differing electrical, physical, or functional characteristics that affect energy consumption.

Maximum wattage means the power consumed by the module after being operated for 60 minutes while mounted in a temperature testing chamber so that the lensed portion of the module is outside the chamber, all portions of the module behind the lens are within the chamber at a temperature of 74 °C, and the air temperature in front of the lens is maintained at a minimum of 49 °C.

Nominal wattage means the power consumed by the module when it is operated within a chamber at a temperature of 25 °C after the signal has been operated for 60 minutes.

* * * * *

19. Subpart M of Part 431 is amended by revising the undesignated center heading following § 431.222 and adding new §§ 431.223, 431.224, and 431.225, to read as follows:

Test Procedures

§ 431.223 Materials incorporated by reference.

(a) *General.* The Department incorporates by reference the following test procedures into Subpart M of Part 431. The Director of the Federal Register has approved the material listed in paragraph (b) of this section for incorporation by reference in accordance with 5 U.S.C. 552(a) and 1 CFR Part 51. Any subsequent amendment to this material by the standard-setting organization will not affect the DOE test procedures unless and until DOE amends its test procedures. The Department incorporates the material as it exists on the date of the approval by the **Federal Register** and a notice of any change in the material will be published in the **Federal Register**.

(b) *List of test procedures incorporated by reference.* (1) Environmental Protection Agency, ''ENERGY STAR Program Requirements for Traffic Signals,'' Version 1.1.

(2) Institute of Transportation Engineers (ITE), ''Vehicle Traffic Control Signal Heads: Light Emitting Diode (LED) Circular Signal Supplement,'' Part 2, 1985.

(c) *Availability of references.* (1) *Inspection of test procedures.* The test procedures incorporated by reference are available for inspection at:

(i) National Archives and Records Administration (NARA). For information on the availability of this material at NARA, call (202) 741–6030, or go to: *http://www.archives.gov/federal_register/code_of_federal_regulations/ibr_locations.html.*

(ii) U.S. Department of Energy, Forrestal Building, Room 1J–018 (Resource Room of the Building Technologies Program), 1000 Independence Avenue, SW., Washington, DC 20585–0121, (202) 586–9127, between 9 a.m. and 4 p.m., Monday through Friday, except Federal holidays.

(2) *Obtaining copies of standards.* Standards incorporated by reference may be obtained from the following source:

(i) Environmental Protection Agency ''ENERGY STAR Program Requirements Traffic Signals,'' Version 1.1, Environmental Protection Agency, Ariel Rios Building, 1200 Pennsylvania Avenue, NW, Washington, DC 20460, (202) 272–0167 or at *http://www.epa.gov.*

(ii) Institute of Transportation Engineers, 1099 14th Street, NW., Suite 300 West, Washington, DC 20005–3438, (202) 289–0222, or *ite_staff@ite.org.*

§ 431.224 Uniform test method for the measurement of energy consumption for traffic signal modules and pedestrian modules.

(a) *Scope.* This section provides the test procedures for measuring, pursuant to EPCA, the maximum wattage and nominal wattage of traffic signal modules and pedestrian modules. For purposes of 10 CFR Part 431 and EPCA, the test procedures for measuring the maximum wattage and nominal wattage of traffic signal modules and pedestrian modules shall be the test procedures specified in § 431.225(b).

(b) *Testing and Calculations.* Determine the nominal wattage and maximum wattage of each covered traffic signal module or pedestrian module by conducting the test procedure set forth in Environmental Protection Agency, ''ENERGY STAR Program Requirements for Traffic Signals,'' version 1.1, section 1, ''Definitions,'' and section 4, ''Test Criteria.'' Measure wattage continuously at the rated voltage that represents normal operation using an RMS sensor having an accuracy of ±1% over the time for which the minimum luminous intensity tests described in VTCSH Part 2, section 6.4.2.1 (nominal wattage) and section 6.4.2.2 (maximum wattage) are conducted.

§ 431.225 Units to be tested.

For each basic model of traffic signal module or pedestrian module selected for testing, a sample of sufficient size shall be selected at random and tested to ensure (Components of similar design may be substituted without requiring additional testing if the represented measures of energy continue to satisfy the applicable sampling provision.)—

(a) Any represented value of estimated maximum and nominal wattage or other measure of energy consumption of a basic model for which consumers would favor lower values shall be no less than the higher of:

(1) The mean of the sample, or

(2) The upper 95 percent confidence limit of the true mean divided by 1.10, and

(b) Any represented value of the energy efficiency or other measure of energy consumption of a basic model for which consumers would favor higher values shall be no greater than the lower of:

(1) The mean of the sample, or

(2) The lower 95 percent confidence limit of the true mean divided by 0.90.

20. Section 431.242 is amended by adding in alphabetical order new definitions for ''Automatic flue damper,'' ''Fan-type heater,'' ''Intermittent ignition device,'' ''Power venting,'' and ''Warm air furnace,'' to read as follows:

§ 431.242 Definitions concerning unit heaters.

Automatic flue damper means a damper, usually electrically operated, which when fitted in the flue of a gas- or oil-fired space-or water-heating appliance and connected to the appliance control system opens on

firing and shuts after the main burner has been extinguished.

Fan-type heater means a type of heater in which a fan incorporated in the equipment supplies air for combustion at a pressure exceeding atmospheric pressure.

Intermittent ignition device means a device that utilizes electricity to ignite gas at the pilot using an ignition source which is automatically ignited or energized when an appliance is called on to operate and which remains continuously ignited or energized during each period of burner operation.

Power venting means a venting system that uses a separate fan in the vent pipe.

* * * * *

Warm air furnace mean commercial warm air furnace as defined in § 431.72.

21. Section 431.262 is amended by adding in alphabetical order a new definition for ''Basic model'' to read as follows:

§ 431.262 Definitions concerning commercial prerinse spray valves.

Basic model means, with respect to commercial prerinse spray valves, all units of a given type of commercial prerinse spray valve (or class thereof) manufactured by one manufacturer and which have the identical flow control mechanism attached to or installed within the fixture fitting, or the identical water-passage design features that use the same path of water in the highest flow mode.

* * * * *

22. Subpart O of Part 431 is amended by revising the undesignated center heading following § 431.262 and adding new §§ 431.263, 431.264 and 431.265, to read as follows:

Test Procedures

§ 431.263 Materials incorporated by reference.

(a) *General.* The Department incorporates by reference the following test procedures into Subpart O of Part 431. The Director of the Federal Register has approved the material listed in paragraph (b) of this section for incorporation by reference in accordance with 5 U.S.C. 552(a) and 1 CFR Part 51. Any subsequent amendment to this material by the standard-setting organization will not affect the DOE test procedures unless DOE amends its test procedures. The Department incorporates the material as it exists on the date of the approval by the **Federal Register** and a notice of any change in the material will be published in the **Federal Register**.

(b) *Test procedures incorporated by reference.* American Society for Testing and Materials (ASTM) Standard F2324–2003, ''Standard Test Method for Prerinse Spray Valves.''

(c) *Availability of references.* (1) *Inspection of test procedures.* The test procedures incorporated by reference are available for inspection at:

(i) National Archives and Records Administration (NARA). For information on the availability of this material at NARA, call (202) 741–6030, or go to: *http://www.archives.gov/federal-register/cfr/ibr-locations.html.*

(ii) U.S. Department of Energy, Forrestal Building, Room 1J–018 (Resource Room of the Building Technologies Program), 1000 Independence Avenue, SW., Washington, DC 20585–0121, (202) 586–9127, between 9 a.m. and 4 p.m., Monday through Friday, except Federal holidays.

(2) *Obtaining copies of standards.* Standards incorporated by reference may be obtained from the following source: Copies of ASTM Standard F2324–2003 can be obtained from ASTM International, 100 Barr Harbor Drive, PO Box C700, West Conshohocken, PA 19428–2959, or telephone (610) 832–9585.

§ 431.264 Uniform test method for the measurement of flow rate for commercial prerinse spray valves.

(a) *Scope.* This section provides the test procedure for measuring, pursuant to EPCA, the water consumption flow rate of commercial prerinse spray valves.

(b) *Testing and calculations.* The test procedure to determine the water consumption flow rate for prerinse spray valves, expressed in gallons per minute (gpm) or liters per minute (L/min), shall be conducted in accordance with the test requirements specified in sections 4.1 and 4.2 (Summary of Test Method), 5.1 (Significance and Use), 6.1 through 6.4 (Apparatus), 8.1 (Sampling), 9.1 through 9.5 (Preparation of Apparatus), and 10.1 through 10.2.5. (Procedure), and calculations in accordance with sections 11.1 through 11.3.2 (Calculation and Report) of the ASTM F2324–2003, ''Standard Test Method for Prerinse Spray Valves.'' Perform only the procedures pertinent to the measurement of flow rate. Record measurements at the resolution of the test instrumentation. Round off calculations to the same number of significant digits as the previous step. Round the final water consumption value to one decimal place as follows:

(1) A fractional number at or above the midpoint between two consecutive decimal places shall be rounded up to the higher of the two decimal places; or

(2) A fractional number below the midpoint between two consecutive decimal places shall be rounded down to the lower of the two decimal places.

§ 431.265 Units to be tested.

For each basic model of commercial prerinse spray valves selected for testing, a sample of sufficient size shall be selected at random and tested to ensure that (Components of similar design may be substituted without requiring additional testing if the represented measures of energy continue to satisfy the applicable sampling provision.)—

(a) Any represented value of estimated water consumption or other measure of water consumption of a basic model for which consumers would favor lower values shall be no less than the higher of:

(1) The mean of the sample, or

(2) The upper 95 percent confidence limit of the true mean divided by 1.10; and

(b) Any represented value of the water efficiency or other measure of water consumption of a basic model for which consumers would favor higher values shall be no greater than the lower of:

(1) The mean of the sample, or

(2) The lower 95 percent confidence limit of the true mean divided by 0.90.

23. Part 431 is amended by adding a new Subpart Q to read as follows:

Subpart Q—Refrigerated Bottled or Canned Beverage Vending Machines

Sec.

Test Procedures

Subpart Q—Refrigerated Bottled or Canned Beverage Vending Machines

§ 431.291 Scope.

This subpart specifies test procedures and energy conservation standards for certain commercial refrigerated bottled or canned beverage vending machines, pursuant to Part C of Title III of the Energy Policy and Conservation Act, as amended, 42 U.S.C. 6311–6316.

§ 431.292 Definitions concerning refrigerated bottled or canned beverage vending machines.

Basic model means, with respect to refrigerated bottled or canned beverage vending machines, all units of a given

type of refrigerated bottled or canned beverage vending machine (or class thereof) manufactured by one manufacturer and which have the same primary energy source, which have electrical characteristics that are essentially identical, and which do not have any differing electrical, physical, or functional characteristics that affect energy consumption.

Refrigerated bottled or canned beverage vending machine means a commercial refrigerator that cools bottled or canned beverages and dispenses the bottled or canned beverages on payment.

Test Procedures

§ 431.293 Materials incorporated by reference.

(a) General. The Department incorporates by reference the following test procedures into Subpart Q of Part 431. The Director of the Federal Register has approved the material listed in paragraph (b) of this section for incorporation by reference in accordance with 5 U.S.C. 552(a) and 1 CFR Part 51. Any subsequent amendment to this material by the standard-setting organization will not affect the DOE test procedures unless DOE amends its test procedures. The Department incorporates the material as it exists on the date of the approval by the **Federal Register** and a notice of any change in the material will be published in the **Federal Register**.

(b) *Test procedures incorporated by reference.* American Society of Heating, Refrigerating and Air-Conditioning Engineers, Inc. (ASHRAE) Standard 32.1–2004, ''Methods of Testing for Rating Vending Machines for Bottled, Canned, and Other Sealed Beverages.''

(c) *Availability of references.* (1) *Inspection of test procedures.* The test procedures incorporated by reference are available for inspection at:

(i) National Archives and Records Administration (NARA). For information on the availability of this material at NARA, call (202) 741–6030, or go to: *http://www.archives.gov/federal-register/cfr/ibr-locations.html.*

(ii) U.S. Department of Energy, Forrestal Building, Room 1J–018 (Resource Room of the Building Technologies Program), 1000 Independence Avenue, SW., Washington, DC 20585–0121, (202) 586–9127, between 9 a.m. and 4 p.m., Monday through Friday, except Federal holidays.

(2) *Obtaining copies of standards.* Standards incorporated by reference may be obtained from the following sources: Copies of ASHRAE Standard 32.1–2004 can be obtained from the American Society of Heating, Refrigerating and Air-Conditioning Engineers, Inc., 1791 Tullie Circle NE, Atlanta, GA 30329–2305, (404) 636–8400, or *http://www.ashrae.org.*

§ 431.294 Uniform test method for the measurement of energy consumption of refrigerated bottled or canned beverage vending machines.

(a) *Scope.* This section provides test procedures that must be followed for measuring, pursuant to EPCA, the energy consumption of refrigerated bottled or canned beverage vending machines.

(b) *Testing and Calculations.* The test procedure for energy consumption of refrigerated bottled or canned beverage vending machines shall be conducted in accordance with the test procedures specified in section 4, ''Instruments,'' section 5, ''Vending Machine Capacity,'' section 6, ''Test Conditions,'' and sections 7.1 through 7.2.3.2, under ''Test Procedures,'' of ANSI/ASHRAE Standard 32.1–2004, ''Methods of Testing for Rating Vending Machines for Bottled, Canned, and Other Sealed Beverages.''

§ 431.295 Units to be tested.

For each basic model of refrigerated bottled or canned beverage vending machine selected for testing, a sample of sufficient size shall be selected at random and tested to ensure that (Components of similar design may be substituted without requiring additional testing if the represented measures of energy continue to satisfy the applicable sampling provision.)—

(a) Any represented value of estimated energy consumption or other measure of energy consumption of a basic model for which consumers would favor lower values shall be no less than the higher of:

(1) The mean of the sample, or

(2) The upper 95 percent confidence limit of the true mean divided by 1.10; and

(b) Any represented value of the energy efficiency or other measure of energy consumption of a basic model for which consumers would favor higher values shall be no greater than the lower of:

(1) The mean of the sample, or

(2) The lower 95 percent confidence limit of the true mean divided by 0.90.

24. Part 431 is amended by adding a new Subpart T to read as follows:

Subpart T—Certification and Enforcement

Sec.

Subpart T—Certification and Enforcement

§ 431.370 Purpose and scope.

This subpart sets forth the procedures to be followed for manufacturer compliance certifications of all covered equipment except electric motors, and for DOE enforcement action to determine whether a basic model of covered equipment, other than electric motors and distribution transformers, complies with the applicable energy or water conservation standard set forth in this part. Energy and water conservation standards include minimum levels of efficiency and maximum levels of consumption (also referred to as performance standards), and prescriptive design requirements (also referred to as design standards). This subpart does not apply to electric motors.

§ 431.371 Submission of data.

(a) *Certification.* (1) Except as provided in paragraph (a)(2) of this section, each manufacturer or private labeler before distributing in commerce any basic model of covered equipment, covered by this subpart and subject to an energy or water conservation standard set forth in this part, shall certify by means of a compliance statement and a certification report that each basic model meets the applicable energy or water conservation standard. The compliance statement, signed by the company official submitting the statement, and the certification report(s) shall be sent by certified mail to: Department of Energy, Office of Energy Efficiency and Renewable Energy, Building Technologies Program, Forrestal Building, 1000 Independence Avenue, SW., Washington, DC 20585–0121, or e-mailed to the Department at: *certification.report@ee.doe.gov.*

(2) Each manufacturer or private labeler of a basic model of commercial clothes washer, distribution transformer, traffic signal module, pedestrian module, and commercial prerinse spray valve shall file a compliance statement and its first certification report with DOE on or

before [Date 1 Year After Publication of the Final Rule in the **Federal Register**]. Each manufacturer or private labeler of a basic model of low-voltage dry-type distribution transformer shall file a compliance statement and its first certification report with DOE on or before January 1, 2008.

(3) Amendment of information. If information in a compliance statement or certification report previously submitted to the Department under this section is found to be incorrect, each manufacturer or private labeler (or an authorized representative) must submit the corrected information to the Department at the address and in the manner described in this section.

(4) Notices designating a change of third-party representative must be sent to the Department at the address and in the manner described in this section.

(5) The compliance statement, which each manufacturer or private labeler need not submit more than once, shall include all information specified in the format set forth in Appendix A of this subpart and shall certify, with respect to each basic model currently produced by the manufacturer and new basic models it introduces in the future, that:

(i) Each basic model complies and will comply with the applicable energy or water conservation standard;

(ii) All representations as to efficiency in the manufacturer's certification report(s) are and will be based on testing and/or use of an AEDM in accordance with 10 CFR Part 431;

(iii) All information reported in the certification report(s) is and will be true, accurate, and complete; and

(iv) The manufacturer or private labeler is aware of the penalties associated with violations of the Act, the regulations thereunder, and 18 U.S.C. 1001, which prohibits knowingly making false statements to the Federal Government.

(6) Each manufacturer must submit to DOE a certification report for all of its basic models.

(i) For covered equipment that are subject to standards other than distribution transformers and electric motors, the certification report (for which a suggested format is set forth in Appendix B of this subpart) shall include for each basic model the product type, product class, manufacturer's name, private labeler's name(s) (if applicable), and the manufacturer's model number(s), and:

(A) The thermal efficiency in percent and the maximum rated capacity (rated maximum input) in Btu/h of commercial warm air furnaces;

(B) The combustion efficiency in percent and the capacity (rated maximum input) in Btu/h of commercial package boilers;

(C) The seasonal energy efficiency ratio and the cooling capacity in Btu/h of small commercial, air cooled, three-phase, packaged air conditioners less than 65,000 Btu/h;

(D) The energy efficiency ratio and the cooling capacity in Btu/h of small commercial water-cooled and evaporatively cooled packaged air conditioners less than 65,000 Btu/h;

(E) The energy efficiency ratio and the cooling capacity in Btu/h of large and very large commercial air cooled, water-cooled, and evaporatively cooled packaged air conditioners;

(F) The energy efficiency ratio and the cooling capacity in Btu/h of packaged terminal air conditioners;

(G) The seasonal energy efficiency ratio, the heating seasonal performance factor and the cooling capacity in Btu/h of small commercial air cooled, three-phase packaged air conditioning heat pumps less than 65,000 Btu/h;

(H) The energy efficiency ratio, the coefficient of performance and the cooling capacity in Btu/h of small commercial water-source packaged air conditioning heat pumps;

(I) The energy efficiency ratio, the coefficient of performance and the cooling capacity in Btu/h of large and very large air cooled commercial package air conditioning heat pumps;

(J) The energy efficiency ratio, coefficient of performance and the cooling capacity in Btu/h of packaged terminal heat pumps;

(K) The maximum standby loss in percent per hour of electric storage water heaters;

(L) The minimum thermal efficiency in percent, the maximum standby loss in Btu/h, and the size (input capacity) in Btu/h of gas- and oil-fired storage water heaters;

(M) The minimum thermal efficiency in percent, maximum standby loss in Btu/h, and the size (storage capacity) in gallons of gas- and oil-fired instantaneous water heaters and gas- and oil-fired hot water supply boilers greater than or equal to 10 gallons;

(N) The minimum thermal efficiency in percent and the size (storage capacity) in gallons of gas- and oil-fired instantaneous water heaters and gas- and oil-fired hot water supply boilers less than 10 gallons;

(O) The minimum thermal insulation and the storage capacity of unfired hot water storage tanks;

(P) The maximum daily energy consumption in kilowatt hours per day and volume in cubic feet of refrigerators with solid doors, refrigerators with transparent doors, freezers with solid doors, and freezers with transparent doors;

(Q) The maximum daily energy consumption in kilowatt hours per day and adjusted volume in cubic feet of refrigerator-freezers with solid doors;

(R) The equipment type, type of cooling, maximum energy use in kilowatt hours per 100 pounds of ice, maximum condenser water use in gallons per 100 pounds of ice, and harvest rate in pounds of ice per 24 hours of commercial ice makers;

(S) The modified energy factor and water consumption factor of commercial clothes washers;

(T) The input power demand in watts of illuminated exit signs;

(U) The nominal and maximum wattage in watts and signal type of traffic signal modules and pedestrian modules; and

(V) The flow rate in gallons per minute of commercial prerinse spray valves.

(ii) For the least efficient basic model of distribution transformer within each ''kVA grouping'' for which this part prescribes an efficiency standard, the certification report (for which a suggested format is set forth in Appendix C of this subpart shall include the kVA rating, the insulation type (i.e., low-voltage dry-type, medium-voltage dry-type or liquid-immersed), the number of phases (i.e., single-phase or three-phase), the BIL group rating (for medium-voltage dry-types), the model number(s), the efficiency, and the method used to determine the efficiency (i.e., actual testing or an AEDM). As used in this section, a ''kVA grouping'' is a group of basic models which all have the same kVA rating, have the same insulation type (i.e., low-voltage dry-type, medium-voltage dry-type or liquid-immersed), have the same number of phases (i.e., single-phase or three-phase), and, for medium-voltage dry-types, have the same BIL group rating (i.e., 20–45 kV BIL, 46–95 kV BIL or greater than 96 kV BIL).

(7) Copies of reports to the Federal Trade Commission that include the information specified in paragraph (a)(6) of this section could serve in lieu of the certification report.

(b) *Model modifications.* Any change to a basic model that affects energy or water consumption (in the case of prerinse spray valves) constitutes the addition of a new basic model. If such a change reduces consumption, the new model shall be considered in compliance with the standard without any additional testing. If, however, such a change increases consumption while meeting the standard, then

(1) For distribution transformers, the manufacturer must submit all information required by paragraph (a)(6)(ii) of this section for the new basic model, unless the manufacturer has previously submitted to DOE a certification report for a basic model of distribution transformer that is in the same kVA grouping as the new basic model, and that has a lower efficiency than the new basic model;

(2) For other equipment, the manufacturer must submit all information required by paragraph (a)(6) of this section for the new basic model; and

(3) Any such submission shall be by certified mail, to: Department of Energy, Office of Energy Efficiency and Renewable Energy, Building Technologies Program, Forrestal Building, 1000 Independence Avenue, SW., Washington, DC 20585–0121, or e-mailed to the Department at: *certification.report@ee.doe.gov*.

(c) *Discontinued model.* For equipment other than distribution transformers, when production of a basic model has ceased and is no longer being distributed, the manufacturer shall report this, by certified mail, to: Department of Energy, Office of Energy Efficiency and Renewable Energy, Building Technologies Program, Forrestal Building, 1000 Independence Avenue, SW., Washington, DC 20585–0121, or e-mailed to the Department at: *certification.report@ee.doe.gov*. For each basic model, the report shall include: equipment type, equipment class, the manufacturer's name, the private labeler's name(s), if applicable, and the manufacturer's model number. If the reporting of discontinued models coincides with the submittal of a certification report, such information can be included in the certification report.

(d) *Third-party representation.* A manufacturer or private labeler may elect to use a third party (such as a trade association or other authorized representative) to submit the certification report to DOE. Such certification reports shall include all the information specified in paragraph (a)(6) of this section. Third parties submitting certification reports shall include the names of the manufacturers or private labelers who authorized the submittal of the certification reports to DOE on their behalf. The third-party representative also may submit discontinued model information on behalf of an authorizing manufacturer.

§ 431.372 Sampling.

For purposes of a certification of compliance, the determination that a basic model complies with the applicable energy conservation standard or water conservation standard shall be based upon the testing and sampling procedures, and other applicable rating procedures set forth in this part. For purposes of a certification of compliance, the determination that a basic model complies with the applicable design standard shall be based on the incorporation of specific design requirements specified in this part.

§ 431.373 Enforcement.

Process for Covered Equipment Other than Electric Motors. For covered equipment other than electric motors, this section sets forth procedures DOE will follow in pursuing alleged non-compliance with an applicable energy or water conservation standard. Paragraph (c) of this section applies to all such covered equipment, paragraphs (a)(1) and (a)(2) of this section apply to all such equipment except for distribution transformers and commercial heating, ventilating, and air conditioning equipment and commercial water heating equipment.

(a) *Performance standards*—(1) *Test notice.* Upon receiving information in writing concerning the energy performance or water performance (in the case of commercial prerinse spray valves) of a particular covered equipment sold by a particular manufacturer or private labeler, which indicates that the covered equipment may not be in compliance with the applicable energy-or water-performance standard, the Secretary may conduct a review of the test records. The Secretary may then conduct enforcement testing of that equipment by means of a test notice addressed to the manufacturer or private labeler in accordance with the following requirements:

(i) The test notice procedure will only be followed after the Secretary or his/her designated representative has examined the underlying test data (or, where appropriate, data about the use of an alternative efficiency determination method (AEDM)) provided by the manufacturer, and after the manufacturer has been offered the opportunity to meet with the Department to verify compliance with the applicable energy conservation standard or water conservation standard. When compliance of a basic model was certified based on an AEDM, the Department has the discretion to pursue other steps provided under this part for verifying the AEDM before invoking the test notice procedure. A representative designated by the Secretary must be permitted to observe any reverification procedures undertaken according to this subpart, and to inspect the results of such reverification.

(ii) The test notice will be signed by the Secretary or his/her designee and will be mailed or delivered by the Department to the plant manager or other responsible official designated by the manufacturer.

(iii) The test notice will specify the model or basic model to be selected for testing, the number of units to be tested, the method for selecting these units, the date and time at which testing is to begin, the date when testing is scheduled to be completed, and the facility at which testing will be conducted. The test notice may also provide for situations in which the selected basic model is unavailable for testing, and it may include alternative basic models. For equipment that this part allows to be rated by use of an AEDM, the specified basic model may be one that the manufacturer has rated by actual testing or that it has rated by the use of an AEDM.

(iv) The Secretary may require in the test notice that the manufacturer of a covered equipment shall ship at his expense a reasonable number of units of each basic model specified in the test notice to a testing laboratory designated by the Secretary. The number of units of a basic model specified in a test notice shall not exceed 20.

(v) Within five working days of the time the units are selected, the manufacturer must ship the specified test units of a basic model to the designated testing laboratory.

(2) *Testing Laboratory.* Whenever the Department conducts enforcement testing at a designated laboratory in accordance with a test notice under this section, the resulting test data shall constitute official test data for that basic model. The Department will use such test data to make a determination of compliance or noncompliance.

(3) *Sampling.* The Secretary will base the determination of whether a manufacturer's basic model complies with the applicable energy-or water-performance standard on testing conducted in accordance with the applicable test procedures specified in this part, and with the following statistical sampling procedures:

(i) For commercial prerinse spray valves, illuminated exit signs, traffic signal modules and pedestrian modules, refrigerated bottled or canned vending machines, and commercial clothes washers, the methods are described in Appendix B to Subpart F of Part 430 (Sampling Plan for Enforcement Testing).

(ii) For automatic commercial ice makers, as well as commercial refrigerators, freezers, and refrigerators-freezers, the methods are described in Appendix C to Subpart T of Part 431 and include the following provisions:

(A) Except as required or provided in paragraphs (a)(3)(ii)(B) and (a)(3)(ii)(C) of this section, initially, the Department will test four units.

(B) Except as provided in paragraph (a)(3)(ii)(C) of this section, if fewer than four units of basic model are available for testing when the manufacturer receives the test notice, then:

(*1*) DOE will test the available unit(s); or

(*2*) If one or more other units of the basic model are expected to become available within six months, DOE may instead at its discretion, test either:

(*i*) The available unit(s) and one or more of the other units that subsequently become available (up to a maximum of four); or

(*ii*) Up to four of the other units that subsequently become available.

(C) Notwithstanding paragraphs (a)(3)(ii)(A) and (a)(3)(ii)(B) of this section, if testing of the available or subsequently available units of a basic model would be impractical, as for example when a basic model is very large, has unusual testing requirements, or has limited production, the Department may in its discretion decide to base the determination of compliance on the testing of fewer than the available number of units, if the manufacturer so requests and demonstrates that the criteria of this paragraph are met.

(D) When testing units under paragraphs (a)(3)(ii)(A), (a)(3)(ii)(B), or (a)(3)(ii)(C) of this section, DOE shall perform the following number of tests:

(*1*) If DOE tests three or four units, it will test each unit once;

(*2*) If DOE tests two units, it will test each unit twice; or

(*3*) If DOE tests one unit, it will test each unit four times.

(E) When it tests three or fewer units, the Department will base the compliance determination on the results of such testing in a manner otherwise in accordance with this section.

(F) For the purposes of paragraphs (a)(3)(ii)(A) through (a)(3)(ii)(C) of this section, available units are those that are available for commercial distribution within the United States.

(4) *Test unit selection.* (i) For commercial prerinse spray valves, illuminated exit signs, traffic signal modules and pedestrian modules, refrigerated bottled or canned vending machines, and commercial clothes washers, the following applies:

(A) The Department shall select a batch, a batch sample, and test units from the batch sample in accordance with the following provisions of this paragraph and the conditions specified in the test notice:

(B) The batch may be subdivided by the Department using criteria specified in the test notice.

(C) The Department will then randomly select a batch sample of up to 20 units from one or more subdivided groups within the batch. The manufacturer shall keep on hand all units in the batch sample until the basic model is determined to be in compliance or non-compliance.

(D) The Department will randomly select individual test units comprising the test sample from the batch sample.

(E) All random selection shall be achieved by sequentially numbering all of the units in a batch sample and then using a table of random numbers to select the units to be tested.

(ii) For automatic commercial ice makers, as well as commercial refrigerators, freezers, and refrigerator-freezers, the following applies:

(A) The Department will select a batch from all available units, and a test sample (i.e., the units to be tested) from the batch, in accordance with the provisions of this paragraph and the conditions specified in the test notice.

(B) DOE may select the batch by utilizing the criteria specified in the test notice, that is, date of manufacture, component-supplier, location of manufacturing facility, or other criteria which may differentiate one unit from another within a basic model.

(C) DOE will randomly select individual units to be tested, comprising the test sample, from the batch. DOE will achieve random selection by sequentially numbering all of the units in a batch and then using a table of random numbers to select the units to be tested. The manufacturer must keep on hand all units in the batch until such time as the inspector determines that the unit(s) selected for testing is(are) operative. Thereafter, once a manufacturer distributes or otherwise disposes of any unit in the batch, it may no longer claim under paragraph (a)(5)(iii) of this section that a unit selected for testing is defective due to a manufacturing defect or failure to operate in accordance with its design and operating instructions.

(5) Test unit preparation. (i) Before and during the testing, a test unit selected in accordance with paragraph (a)(4) of this section shall not be prepared, modified, or adjusted in any manner unless such preparation, modification, or adjustment is allowed by the applicable DOE test procedure. DOE will test each unit in accordance with the applicable test procedures.

(ii) No one may perform any quality control, testing, or assembly procedures on a test unit, or any parts and subassemblies thereof, that is not performed during the production and assembly of all other units included in the basic model.

(iii) A test unit shall be considered defective if it is inoperative. A test unit is also defective if it is found to be in noncompliance due to a manufacturing defect or due to failure of the unit to operate according to the manufacturer's design and operating instructions, and the manufacturer demonstrates by statistically valid means that, with respect to such defect or failure, the unit is not representative of the population of production units from which it is obtained. Defective units, including those damaged due to shipping or handling, must be reported immediately to DOE. The Department will authorize testing of an additional unit on a case-by-case basis.

(6) *Testing at manufacturer's option.* (i) If the Department determines a basic model to be in noncompliance with the applicable energy performance standard or water performance standard at the conclusion of its initial enforcement sampling plan testing, the manufacturer may request that the Department conduct additional testing of the basic model. Additional testing under this paragraph must be in accordance with the applicable test procedure, and:

(A) For commercial prerinse spray valves, illuminated exit signs, traffic signal modules and pedestrian modules, refrigerated bottled or canned vending machines, and commercial clothes washers, the applicable provisions in Appendix B to Subpart F of Part 430;

(B) For automatic commercial ice makers, as well as commercial refrigerators, freezers, and refrigerator-freezers, the applicable provisions in Appendix C of this subpart, and limited to a maximum of six additional units of basic model.

(ii) All units tested under this paragraph shall be selected and tested in accordance with paragraphs (a)(1)(v), (a)(2), (a)(4), and (a)(5) of this section.

(iii) The manufacturer shall bear the cost of all testing under this paragraph.

(iv) The Department will advise the manufacturer of the method for selecting the additional units for testing, the date and time at which testing is to begin, the date by which testing is scheduled to be completed, and the facility at which the testing will occur.

(v) The manufacturer shall cease distribution of the basic model tested

under the provisions of this paragraph from the time the manufacturer elects to exercise the option provided in this paragraph until the basic model is determined to be in compliance. The Department may seek civil penalties for all units distributed during such period.

(vi) If the additional testing results in a determination of compliance, the Department will issue a notice of allowance to resume distribution.

(b) *Design standard.* In the case of a design standard, the Department can determine that a model is noncompliant after the Department has examined the underlying design information of the manufacturer and has offered the manufacturer the opportunity to verify compliance with the applicable design standard.

(c) *Cessation of distribution of a basic model of commercial equipment other than electric motors.* (1) In the event the Department determines, in accordance with enforcement provisions set forth in this subpart, a model of covered equipment is noncompliant, or if a manufacturer or private labeler determines one of its models to be in noncompliance, the manufacturer or private labeler shall:

(i) Immediately cease distribution in commerce of all units of the basic model in question;

(ii) Give immediate written notification of the determination of noncompliance to all persons to whom the manufacturer has distributed units of the basic model manufactured since the date of the last determination of compliance; and

(iii) If requested by the Secretary, provide DOE within 30 days of the request, records, reports and other documentation pertaining to the acquisition, ordering, storage, shipment, or sale of a basic model determined to be in noncompliance.

(2) The manufacturer may modify the noncompliant basic model in such manner as to make it comply with the applicable performance standard. The manufacturer or private labeler must treat such a modified basic model as a new basic model and certify it in accordance with the provisions of this subpart. In addition to satisfying all requirements of this subpart, the manufacturer must also maintain records that demonstrate that modifications have been made to all units of the new basic model before its distribution in commerce.

(3) If a manufacturer or private labeler has a basic model that is not properly certified in accordance with the requirements of this subpart, the Secretary may seek, among other remedies, injunctive action to prohibit distribution in commerce of the basic model.

Appendix A to Subpart T of Part 431—Compliance Statement for Certain Commercial Equipment

Product: _____

Manufacturer's or Private Labeler's Name and Address:

_____

_____

[Company name] (''the company'') submits this Compliance Statement under 10 CFR Part 431 (Energy Efficiency Program for Certain Commercial and Industrial Equipment) and Part C of the Energy Policy and Conservation Act (Pub. L. 94–163), and amendments thereto. I am signing this on behalf of and as a responsible official of the company. All basic models of commercial or industrial equipment subject to energy conservation standards specified in 10 CFR Part 431 that this company manufacturers comply with the applicable energy or water conservation standard(s). We have complied with the applicable testing requirements (prescribed in 10 CFR Part 431) in making this determination, and in determining the energy efficiency, energy use, or water use that is set forth in any accompanying Certification Report. All information in such Certification Report(s) and in this Compliance Statement is true, accurate, and complete. The company pledges that all this information in any future Compliance Statement(s) and Certification Report(s) will meet these standards, and that the company will comply with the energy conservation requirements in 10 CFR Part 431 with regard to any new basic model it distributes in the future. The company is aware of the penalties associated with violations of the Act and the regulations thereunder, and is also aware of the provisions contained in 18 U.S.C. 1001, which prohibits knowingly making false statements to the Federal Government.

Name of Company Official: _____

Signature of Company Official: _____

Title: _____

Firm or Organization: _____

Date: _____

Name of Person to Contact for Further Information: _____

Address: _____

_____

Telephone Number: _____

Facsimile Number: _____

Third-Party Representation (if applicable)

For a certification reports prepared and submitted by a third-party organization under the provisions of 10 CFR Part 431, the company official who authorized said third-party representation is:

Name: _____

Title: _____

Address: _____

_____

Telephone Number: _____

_____

Facsimile Number: _____

The third-party organization authorized to act as representative:

Third-Party Organization:

_____

Address: _____

_____

Telephone Number: _____

Facsimile Number: _____

Appendix B to Subpart T to Part 431—Certification Report for Certain Commercial Equipment

All information reported in this Certification Report(s) is true, accurate, and complete. The company is aware of the penalties associated with violations of the Act, the regulations thereunder, and is also aware of the provisions contained in 18 U.S.C. 1001, which prohibits knowingly making false statements to the Federal Government.

Name of Company Official or Third-Party Representative:

_____

Signature of Company Official or Third-Party Representative:

_____

Title: _____

Date: _____

Equipment Type: _____

Manufacturer: _____

Private Labeler (if applicable): _____

Name of Person to Contact for Further Information: _____

Address: _____

_____

Telephone Number: _____

Facsimile Number: _____

For Existing, New, or Modified Models: [1]

For Discontinued Models: [2]

Submit by Certified Mail to: U.S. Department of Energy, Office of Energy Efficiency and Renewable Energy, Building Technologies Program, Forrestal Building, 1000 Independence Avenue, SW., Washington, DC 20585–0121.

Submit by E-mail to: U.S. Department of Energy, Office of Energy Efficiency and Renewable Energy, Building Technologies Program, 1000 Independence Avenue, SW., Washington, DC 20585–0121, (202) 586–9127. E-mail: *certification.report@ee.doe.gov.*

Appendix C to Subpart T of Part 431—Certification Report for Distribution Transformers

All information reported in this Certification Report(s) is true, accurate, and complete. The company is aware of the penalties associated with violations of the Act, the regulations thereunder, and is also aware of the provisions contained in 18 U.S.C. 1001, which prohibits knowingly making false statements to the Federal Government.

[1] Provide specific equipment information including, for each basic model, the product class, the manufacturer's model number(s), and the other information required in 431.371(a)(6)(i).

[2] Provide manufacturer's model number(s).

Name of Company Official or Third-Party Representative:

_____

Signature of Company Official or Third-Party Representative:

_____

Title: _____

Date: _____

Equipment Type: _____

Manufacturer: _____

Private Labeler (if applicable): _____

Name of Person to Contact for Further Information: _____

Address: _____

_____

Telephone Number: _____

Facsimile Number: _____

For Existing, New, or Modified Models: [1]

Prepare tables that will list distribution transformer efficiencies. Each table should have a heading that provides the name of the manufacturer, as well as the type of transformer (i.e., low-voltage dry-type, liquid-immersed, or medium-voltage dry-type) and the number of phases for the transformers reported in that table. Each table should also have five columns, labeled ''kVA rating,'' ''BIL rating'' for medium-voltage units, ''Least efficient basic model (model number(s)),'' ''Efficiency (%)'' and ''Test rating.'' Each table should have one row for each of the kVA groups that are produced by the manufacturer and that are subject to minimum efficiency standards. In the ''Test Method Used'' column, the manufacturer should report whether the efficiency of the reported least efficient basic model in that kVA grouping was determined by testing or through the application of an alternative efficiency determination method.

Submit by Certified Mail to: U.S. Department of Energy, Office of Energy Efficiency and Renewable Energy, Building Technologies Program, Forrestal Building, 1000 Independence Avenue, SW., Washington, DC 20585–0121.

Submit by E-mail to: U.S. Department of Energy, Office of Energy Efficiency and Renewable Energy, Building Technologies Program, 1000 Independence Avenue, SW., Washington, DC 20585–0121, (202) 586–9127. E-mail: *certification.report@ee.doe.gov.*

Appendix D to Subpart T of Part 431—Enforcement for Performance Standards; Compliance Determination Procedure for Certain Commercial Equipment

The Department will determine compliance as follows:

(a) After it has determined the sample size, the Department will measure the energy performance for each unit in accordance with the following table:

Sample size	Number of tests for each unit
4	1
3	1
2	2
1	4

(b) Compute the mean of the measured energy performance (x_1) for all tests as follows:

$$x_1 = \frac{1}{n_1}\left\{\sum_{i=1}^{n_1} x_i\right\} \qquad [1]$$

Where x_i is the measured energy efficiency or consumption from test i, and n_1 is the total number of tests.

(c) Compute the standard deviation (s_1) of the measured energy performance from the n_1 tests as follows:

$$S_1 = \sqrt{\frac{\sum_{i=1}^{n_1}(x_i - x_1)^2}{n_1 - 1}} \qquad [2]$$

(d) Compute the standard error (S_{x1}) of the measured energy performance from the n_1 tests as follows:

$$S_{x_1} = \frac{S_1}{\sqrt{n_1}} \qquad [3]$$

(e)(1) For an energy efficiency standard, compute the lower control limit (LCL_1) according to:

$$LCL_1 = EPS - ts_{x_1} \qquad [4a]$$

or

$$LCL_1 = 97.5\ EPS \qquad [4b]$$

(whichever is greater)

(2) For an energy use standard, compute the upper control limit (UCL_1) according to:

$$UCL_1 = EPS + ts_{x_1} \qquad [5a]$$

or

$$UCL_1 = 1.025\ EPS \qquad [5b]$$

(whichever is less)

Where EPS is the energy performance standard and t is a statistic based on a 97.5-percent, one-sided confidence limit and a sample size of n_1.

(f)(1) Compare the sample mean to the control limit. The basic model is in compliance and testing is at an end if, for an energy efficiency standard, the sample mean is equal to or greater than the lower control limit or, for an energy consumption standard, the sample mean is equal to or less than the upper control limit. If, for an energy efficiency standard, the sample mean is less than the lower control limit or, for an energy consumption standard, the sample mean is greater than the upper control limit, compliance has not been demonstrated. Unless the manufacturer requests manufacturer-option testing and provides the additional units for such testing, the basic model is in noncompliance and the testing is at an end.

(2) If the manufacturer does request additional testing, and provides the necessary additional units, DOE will test each unit the same number of times it tested previous units. DOE will then compute a combined sample mean, standard deviation, and standard error as described above. (The ''combined sample'' refers to the units DOE initially tested plus the additional units DOE has tested at the manufacturer's request.) DOE will determine compliance or noncompliance from the mean and the new lower or upper control limit of the combined sample. If, for an energy efficiency standard, the combined sample mean is equal to or greater than the new lower control limit or, for an energy consumption standard, the sample mean is equal to or less than the upper control limit, the basic model is in compliance, and testing is at an end. If the combined sample mean does not satisfy one of these two conditions, the basic model is in noncompliance and the testing is at an end.

25. Section 431.408 is added to Subpart V to read as follows:

§ 431.408 Preemption of State regulations for covered equipment other than electric motors and commercial HVAC and WH products.

This section concerns State regulations providing for any energy conservation standard, or water conservation standard (in the case of commercial prerinse spray valves or commercial clothes washers), or other requirement with respect to the energy efficiency, energy use, or water use (in the case of commercial prerinse spray valves or commercial clothes washers), for any covered equipment other than an electric motor or commercial HVAC and WH product. Any such regulation that contains a standard or requirement that is not identical to a Federal standard in effect under this subpart is preempted by that standard, except as provided for in sections 327(b) and (c) and 345 (e), (f) and (g) of the Act.

[FR Doc. 06–6395 Filed 7–24–06; 8:45 am]

BILLING CODE 6450–01–P

[1] Provide specific equipment information including for each basic model, the product class, the manufacturer's model number(s), and the other information required in § 431.371(a)(6)(i).

Federal Register

Tuesday,
July 25, 2006

Part III

Department of Transportation

Federal Aviation Administration

14 CFR Parts 27 and 29

Performance and Handling Qualities Requirements for Rotorcraft; Proposed Rule

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Parts 27 and 29

[Docket No. FAA–2006–25414; Notice No. 06–11]

RIN 2120–AH87

Performance and Handling Qualities Requirements for Rotorcraft

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of proposed rulemaking (NPRM).

SUMMARY: The FAA is proposing new and revised airworthiness standards for normal and transport category rotorcraft due to technological advances in design and operational trends in normal and transport rotorcraft performance and handling qualities. The changes would enhance the safety standards for performance and handling qualities to reflect the evolution of rotorcraft capabilities.

DATES: Send your comments on or before October 23, 2006.

ADDRESSES: You may send comments [identified by Docket Number FAA–2006–25414] using any of the following methods:

- DOT Docket Web site: Go to *http://dms.dot.gov* and follow the instructions for sending your comments electronically.
- Government-wide rulemaking Web site: Go to *http://www.regulations.gov* and follow the instructions for sending your comments electronically.
- Mail: Docket Management Facility, U.S. Department of Transportation, 400 Seventh Street, SW., Nassif Building, Room PL–401, Washington, DC 20590–0001.
- Fax: 1–202–493–2251.
- Hand Delivery: Room PL–401 on the plaza level of the Nassif Building, 400 Seventh Street, SW., Washington, DC, between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays.

For more information on the rulemaking process, see the **SUPPLEMENTARY INFORMATION** section of this document.

Privacy: We will post all comments we receive, without change, to *http://dms.dot.gov,* including any personal information you provide. For more information, see the Privacy Act discussion in the **SUPPLEMENTARY INFORMATION** section of this document.

Docket: To read background documents or comments received, go to *http://dms.dot.gov* at any time or to Room PL–401 on the plaza level of the Nassif Building, 400 Seventh Street, SW., Washington, DC, between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays.

FOR FURTHER INFORMATION CONTACT: Jeff Trang, Rotorcraft Standards Staff, Rotorcraft Directorate, ASW–110, Federal Aviation Administration, Fort Worth, Texas 76193–0110, telephone number (817) 222–5135; facsimile (817) 222–5961, e-mail *jeff.trang@faa.gov.*

SUPPLEMENTARY INFORMATION:

Comments Invited

The FAA invites interested persons to participate in this rulemaking by submitting written comments, data, or views. We also invite comments relating to the economic, environmental, energy, or federalism impacts that might result from adopting the proposals in this document. The most helpful comments reference a specific portion of the proposal, explain the reason for any recommended change, and include supporting data. We ask that you send us two copies of written comments.

We will file in the docket all comments we receive, as well as a report summarizing each substantive public contact with FAA personnel concerning this proposed rulemaking. The docket is available for public inspection before and after the comment closing date. If you wish to review the docket in person, go to the address in the **ADDRESSES** section of this preamble between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays. You may also review the docket using the Internet at the web address in the **ADDRESSES** section.

Privacy Act: Using the search function of our docket Web site, anyone can find and read the comments received into any of our dockets, including the name of the individual sending the comment (or signing the comment on behalf of an association, business, labor union, etc.). You may review DOT's complete Privacy Act Statement in the **Federal Register** published on April 11, 2000 (65 FR 19477–78) or you may visit *http://dms.dot.gov.*

Before acting on this proposal, we will consider all comments we receive on or before the closing date for comments. We will consider comments filed late if it is possible to do so without incurring expense or delay. We may change this proposal in light of the comments we receive.

If you want the FAA to acknowledge receipt of your comments on this proposal, include with your comments a pre-addressed, stamped postcard on which the docket number appears. We will stamp the date on the postcard and mail it to you.

Proprietary or Confidential Business Information

Do not file in the docket information that you consider to be proprietary or confidential business information. Send or deliver this information directly to the person identified in the **FOR FURTHER INFORMATION CONTACT** section of this document. You must mark the information that you consider proprietary or confidential. If you send the information on a disk or CD–ROM, mark the outside of the disk or CD–ROM and also identify electronically within the disk or CD–ROM the specific information that is proprietary or confidential.

Under 14 CFR 11.35(b), when we are aware of proprietary information filed with a comment, we do not place it in the docket. We hold it in a separate file to which the public does not have access, and place a note in the docket that we have received it. If we receive a request to examine or copy this information, we treat it as any other request under the Freedom of Information Act (5 U.S.C. 552). We process such a request under the DOT procedures found in 49 CFR part 7.

Availability of Rulemaking Documents

You can get an electronic copy using the Internet by:

(1) Searching the Department of Transportation's electronic Docket Management System (DMS) Web page (*http://dms.dot.gov/search*);

(2) Visiting the FAA's Regulations and Policies Web page at *http://www.faa.gov/regulations_policies/*; or

(3) Accessing the Government Printing Office's Web page at *http://www.gpoaccess.gov/fr/index.html.*

You can also get a copy by sending a request to the Federal Aviation Administration, Office of Rulemaking, ARM–1, 800 Independence Avenue SW., Washington, DC 20591, or by calling (202) 267–9680. Make sure to identify the docket number, notice number, or amendment number of this rulemaking.

Authority for This Rulemaking

The FAA's authority to issue rules regarding aviation safety is found in Title 49 of the United States Code. Subtitle I, Section 106 describes the authority of the FAA Administrator. Subtitle VII, Aviation Programs, describes in more detail the scope of the agency's authority.

This rulemaking is promulgated under the authority described in Subtitle VII, Part A, Subpart III, Section 44701, ''General requirements,'' Section 44702, ''Issuance of Certificates,'' and

Section 44704, ''Type Certificates, production certificates, and airworthiness certificates.'' Under Section 44701, the FAA is charged with prescribing regulations and minimum standards for practices, methods, and procedures the Administrator finds necessary for safety in air commerce. Under Section 44702, the FAA may issue various certificates including type certificates, production certificates, air agency certificates, and airworthiness certificates. Under Section 44704, the FAA shall issue type certificates for aircraft, aircraft engines, propellers, and specified appliances when the FAA finds that the product is properly designed and manufactured, performs properly, and meets the regulations and minimum prescribed standards. This regulation is within the scope of these authorities because it would promote safety by updating the existing minimum prescribed standards, used during the type certification process, to reflect the enhanced performance and handling quality capabilities of rotorcraft. It would also harmonize this standard with international standards for evaluating the performance and handling qualities of normal and transport category rotorcraft.

Background

Statement of the Problem

Due to technological advances in design and operational trends in normal and transport rotorcraft performance and handling qualities, the FAA is proposing new and revised airworthiness standards. Some current part 27 and 29 regulations do not reflect, in some cases, safety levels attainable by modern rotorcraft, and FAA-approved equivalent level of safety findings.

History

It has been more than 20 years since the last major promulgation of rules that address the performance and handling qualities of rotorcraft (Amendments 29–24 and 27–21, 49 FR 44433 and 49 FR 44436, November 6, 1984). Since then, the FAA has developed policy and procedures that address certain aspects of these requirements to make the parts 27 and 29 rules workable within the framework of later rotorcraft designs and operational needs. In addition, most manufacturers have routinely exceeded some of the minimum performance requirements in part 27 and 29 of Title 14 of the Code of Federal Regulation (CFR) to meet customer needs.

After the publication of the first issue of the Joint Aviation Regulations (JAR) for parts 27 and 29, which closely mirrored 14 CFR part 29 at amendment 31 and 14 CFR part 27 at amendment 27, the European Joint Aviation Authorities (JAA) Helicopter Airworthiness Study Group (HASG) and the FAA agreed to form a specialist subgroup to review proposals on flight matters that were not incorporated during promulgation of the JAR. This subgroup consisted of representatives of the JAA, Association of European des Constructeurs de Material Aerospatiale (AECMA), Aerospace Industries Association of America (AIA), and the FAA.

The subgroup first met in January 1994, and presented their findings to the HASG and the FAA in May 1994. The FAA announced the formation of the Performance and Handling Qualities Requirements Harmonization Working Group (PHQHWG) in the **Federal Register** (60 FR 4220, January 20, 1995) to act on the recommendation presented to the HASG and the FAA by the specialist subgroup. The PHQHWG was charged with recommending to the Aviaiton Rulemaking Advisory Committee (ARAC) new or revised standards for flight-test procedures and requirements. The PHQHWG was tasked to ''Review Title 14 Code of Federal Regulations part 27 and Appendix B, and part 29 and Appendix B, and supporting policy and guidance material for the purpose of determining the course of action to be taken for rulemaking and/or policy relative to the issue of harmonizing performance and handling qualities requirements.''

The PHQHWG included representatives that expressed an interest by responding to the notice the FAA published in the **Federal Register**. The PHQHWG included representatives from the AIA, the AECMA, the European JAA, Transport Canada, and the FAA Rotorcraft Directorate. Additionally, the PHQHWG consulted representatives from the manufacturers of small rotorcraft. This broad participation is consistent with the FAA policy to involve all known interested parties as early as practicable in the rulemaking process. The PHQHWG first met in March 1995 and has subsequently met nine times.

General Discussion of the Proposals

Using the report submitted to the HASG as a starting point, the PHQHWG agreed there was a need to update the rotorcraft performance and handling qualities standards. As the meetings progressed, the group evaluated additional internally generated proposals to change the performance and handling qualities requirements that were believed to be pertinent to the group's task. These proposals were either accepted or rejected on their merits and by consensus of the group. The group also came to a common understanding of some acceptable methods of compliance for the proposals as well as the current requirements, and appropriate Advisory Circular material was developed concurrently with this proposed rule.

There was much discussion in the working group about the evolution of the Appendix B Instrument Flight Rules (IFR) flight characteristic requirements. Early IFR helicopters were developed using relatively simple analog systems consisting primarily of two or three-axis rate damping with, in some cases, attitude or heading hold features. Today, there are complex digital automatic flight control systems or flight management systems available with highly redundant system architectures. These highly complex systems may have enough redundancy or compensating features to allow system operating characteristics as well as acceptable aircraft handling qualities to be maintained in degraded modes of operation. Due to the difficulty of adequately addressing all the various elements of these complex systems and the associated flight characteristics, it was decided not to initiate parts 27 and 29 rulemaking addressing these complex systems at this time, and that the certification requirements for these types of complex systems would be handled on a case-by-case basis within the current regulatory structure.

Section-by-Section Discussion of the Proposals

Section 27.25 Weight Limits

Paragraph (a)(1)(iv) would be added to formalize the equivalent level of safety findings by establishing a maximum weight limit if the requirements in § 27.79 or § 27.143(c)(1) cannot be met. Some recent certifications of part 27 rotorcraft have required placing weight, altitude, and temperature limitations in the Rotorcraft Flight Manual (RFM) to achieve an equivalent level of safety with certain flight requirements. Specifically, the requirement for controllability near the ground while at maximum weight and 7,000 feet density altitude and the requirement to establish the height-speed envelope at maximum weight or the highest weight allowing for hover out-of-ground-effect (OGE) for altitudes above sea level are considered a minimum level of safety for normal category rotorcraft. If compliance with these minimum standards is reached, the resultant data is put in the flight manual as performance information. In some cases, an equivalent level of safety

has been attained by prohibiting certain operations and including limitations in the RFM that reflect the actual capability of the rotorcraft.

Section 29.25 Weight Limits

Amendments 29–21 (48 FR 4374, January 31, 1983) and 29–24 (49 FR 44422, November 6, 1984) granted relief to certain operating limitations for Category B certificated rotorcraft with a passenger seating capacity of nine or less. These amendments stated that, for these rotorcraft, the hover controllability requirements of § 29.143(c) should not be operating limitations. However, these amendments did not specifically include language that would assure appropriate limitations are provided in the RFM. The FAA has determined that it is necessary to establish appropriate limitations to ensure safe aircraft operations within the demonstrated performance envelope of the helicopter. This proposed rule would amend § 29.25 by requiring that the maximum weights, altitudes, and temperatures demonstrated for compliance with § 29.143(c), which may also include limited wind azimuths, become operating limitations.

New § 27.49 Performance at Minimum Operating Speed (Formerly § 27.73)

This proposed rule would redesignate § 27.73 as § 27.49 and add a requirement to determine the OGE hover performance. Installed engine power available on normal category helicopters has increased significantly since the promulgation of the original part 27 requirement, particularly for hot-day and high-altitude conditions. As a result, OGE helicopter operations once limited to special missions have become common. Most manufacturers present OGE hover performance data in approved flight manuals, although these data are not currently required. This change would mandate the current industry practice and require that OGE hover data be determined throughout the range of weights, altitudes, and temperatures.

Section 27.51 Takeoff

The proposed rule would revise the wording of § 27.51 to recognize that the most critical center-of-gravity (CG) may not be the extreme forward CG, and would require that tests be performed at the most critical CG configuration and at the maximum weight for which takeoff certification is requested. The current standard requires that tests be performed at the extreme forward CG and at a weight selected by the applicant for altitudes above sea level. Although for most rotorcraft the extreme forward CG is most critical, this may not be true for all rotorcraft, and the proposed language would provide for such possibilities. This change to § 27.51 more clearly states the intent of the current rule, which is to demonstrate engine failure along the takeoff flight path at the weight for which takeoff data are provided. The requirement to demonstrate safe landings after an engine failure at any point along the takeoff path up to the maximum takeoff altitude or 7,000 feet, whichever is less, has been clarified to explicitly state that the altitudes cited in the requirement are density altitudes.

Section 27.75 Landing

The proposed rule would revise § 27.75(a) to state the required flight condition in more traditional rotorcraft terminology. Included in this revision to § 27.75(a) is the requirement for multi-engine helicopters to demonstrate landings with one engine inoperative and initiated from an established approach. The proposed rule would also make a minor revision in the text of paragraph (a) of this section by replacing the word ''glide'' with ''autorotation.''

Section 27.79 Limiting Height-Speed Envelope

The proposed rule would revise § 27.79(a)(1) to include the words ''density altitude'' after ''7000 feet.'' The proposed rule would also revise § 27.79(a)(2) by removing the word ''lesser'' from the first sentence. This change reflects that current OGE weights for helicopters are not necessarily less than the maximum weight at sea level. Additionally, in § 27.79(b)(2), the term ''greatest power'' is removed and replaced with language that more clearly states the power to be used on the remaining engine(s) for multi-engine helicopters. This ''minimum installed specification power'' is the minimum uninstalled specification engine power after it is corrected for installation losses. The specific text in the proposed rule of the ambient conditions that define the engine power to be used during the compliance demonstration is consistent with existing advisory material and current industry practice.

Section 27.143 Controllability and Maneuverability

This proposed rule would revise § 27.143(a)(2)(v) to replace the word ''glide'' with ''autorotation.'' This minor change does not affect the method of compliance but states the required flight condition in more traditional rotorcraft terminology.

This proposed rule would re-designate § 27.143(c) paragraphs (1) through (4). Paragraph (4) would become paragraph (1) and paragraphs (1), (2), and (3) would become paragraphs (i), (ii), and (iii). Paragraph (c) in § 27.143 is rewritten to more clearly state that controllability on or near the ground must be demonstrated throughout a range of speeds from zero to at least 17 knots. The current part 27 rule could lead some applicants to conclude that only a 17-knots controllability data point must be considered. That was not the intent of the current part 27 requirement. The most critical speed may be less than 17 knots. Additionally, the altitude requirement is clarified with the addition of the words ''density altitude.''

Section 27.143(c)(2) is revised to require that controllability be determined at altitudes above 7,000 feet density altitude if takeoff and landing data are scheduled above that altitude. Currently, no requirement exists to determine controllability above 7,000 feet, even though takeoff and landing data may be presented above that altitude. With the advent of lighter and more powerful engines, it is not uncommon for rotorcraft to operate at altitudes that, until recently, were limited to a small number of rotorcraft performing very specialized operations. Since more rotorcraft are operating at these altitudes, safety dictates that controllability and maneuverability be determined above 7,000 feet.

The proposed rule would add § 27.143(d) to require the determination of controllability for wind velocities from zero to at least 17 knots OGE at weights selected by the applicant. Operations in support of law enforcement, search and rescue, and media coverage are often performed in such a manner that the rotorcraft performance in rearward or quartering flight is important in accomplishing the mission. This new requirement in § 27.143(d), in conjunction with the proposed OGE hover requirement of § 27.49, would increase the level of safety by requiring additional performance information.

Section 29.143 Controllability and Maneuverability

The proposed rule would revise § 29.143(a)(2)(v) to replace the word ''glide'' with ''autorotation.'' This minor change does not affect the method of compliance but states the required flight condition in more traditional rotorcraft terminology.

Paragraph (c) in section § 29.143 would be rewritten to clarify that

controllability on or near the ground must be demonstrated throughout a range of speeds from zero to at least 17 knots. The current part 29 rule could lead some applicants to the conclusion that only a 17-knot controllability data point must be considered when, in fact, the most critical speed may be less than 17 knots. This proposed rule would add paragraph (c)(4) to § 29.143 to explicitly require that controllability be determined for wind velocities up to at least 17 knots, at an altitude from standard sea level conditions to the maximum takeoff and landing altitude capability of the rotorcraft. This proposed rule reflects current practice.

This proposed rule would add paragraph (d) to § 29.143 to require that controllability be determined for wind velocities up to at least 17 knots OGE at weights selected by the applicant. Today, operations in support of law enforcement, search and rescue, and media coverage will often be performed in such a manner that the rotorcraft performance in rearward or quartering flight are of a safety concern.

Sections 27.173 and 29.173 Static Longitudinal Stability

A minor clarification change is proposed to paragraph (a) in §§ 27.173 and 29.173 to change ''a speed'' to ''an airspeed.'' Paragraph (b) would be combined with paragraph (c) in §§ 27.173 and 29.173 to allow neutral or negative static stability in limited areas of the flight envelope, if adequate compensating characteristics are present and the pilot can maintain airspeed within 5 knots of the desired trim speed during the conditions specified in §§ 27.175 and 29.175.

The ability to maintain appropriate airspeed control during other flight conditions would be tested under §§ 27.143 and 29.143. Neutral or negative static longitudinal stability in limited flight domains has been allowed for numerous rotorcraft under equivalent level of safety findings when adequate compensating features have been present. The satisfactory experience gained with these equivalent safety findings has provided the basis for the proposed change. Historically, these limited flight domains have been encountered at the aft limit of the weight/CG envelopes during descent, or autorotation, or climb stability demonstrations. Historically, negative longitudinal control position gradient versus airspeed has generally been no more than 2 to 3 percent of the total control travel.

Additionally, these proposals would delete the §§ 27.173(c) and 29.173(c) requirements relating to the hover demonstration specified in the current §§ 27.175(d) and 29.175(d). See additional discussion at §§ 27.175 and 29.175.

Sections 27.175 and 29.175 Demonstration of Static Longitudinal Stability

The proposals in paragraphs (a) and (b) would decrease the speed range about the specified trim speeds to more representative values than are currently contained in the rule. A new paragraph (c) would require an additional level flight demonstration point. The current paragraph (c) would be re-designated as paragraph (d), and the current paragraph (d) containing the hover demonstration would be deleted.

Some current requirements in §§ 27.175 and 29.175 are not appropriate for the newer generation of rotorcraft. When the current regulation was written, the cruise demonstration of 0.7 V_H to 1.1 V_H typically represented approximately a 30 knots speed variation for helicopters. Now, the cruise demonstration, between the maximum and the minimum speeds (1.1 V_H and 0.7 V_H), can encompass such a large speed range that the trim point and end points actually represent completely different flight regimes rather than perturbations about a trim point in a given flight regime. For some modern helicopters with a never-exceed speed (V_{NE}) in excess of 150 knots, the speed variation for the cruise demonstration could approach 60 knots, which makes the maneuver difficult to perform and does not represent a normal variation about a trim point. These proposals would reduce the speed range for the cruise demonstration to ±10 knots about the specified trim point.

An additional demonstration point at a trim airspeed of $V_{NE} - 10$ knots is proposed to maintain the data coverage over a speed range similar to that contained in the current §§ 27.175(b) and 29.175(b).

For the demonstration in autorotation, the current requirement specifies that the rotorcraft be trimmed at speeds found necessary by the Administrator to demonstrate stability. The proposed rule would specify typically used trim speeds—minimum rate of descent and best angle of glide airspeeds—for the stability demonstration. The conditions required to develop these airspeeds are currently stated in §§ 27.67, 27.71, 29.67 and 29.71. The proposed rule would also limit the speed range for demonstration to ±10 knots from the trim points. The proposed new trim points and speed ranges may not encompass V_{NE} in autorotation as explicitly required in current §§ 27.175 and 29.175. The proposed trim points, however, provide data at the most likely operating conditions. Autorotation at V_{NE} is typically a transient and dynamic flight condition that often places high workload demands on the pilot due primarily to maintaining rotor speed control and the desired flight path. During these dynamic conditions of autorotation at V_{NE} that are evaluated under §§ 27.143 and 29.143, longitudinal static stability is less important than in the more stabilized conditions as proposed.

This proposed rule would delete the hover demonstration requirements of current §§ 27.175(d) and 29.175(d). The requirement to demonstrate static longitudinal stability in a hover has been shown to be unnecessary since the proper sense and motion of controls during hover are evaluated as part of other required tests. The controllability and maneuverability requirements of §§ 27.143(a) and (c) and 29.143(a) and (c) adequately address the safety considerations during hover flight.

Sections 27.177 and 29.177 Static Directional Stability

This proposed rule would revise §§ 27.177 and 29.177 to change the demonstration criteria for static directional stability. The current part 27 and 29 rule contains general language and relies primarily on a pilot's subjective judgment that he is approaching the sideslip limit, which renders it difficult to make compliance determinations due to a lack of objective test criteria. The proposals would provide further objective criteria over which the directional stability characteristics of rotorcraft are evaluated. The proposed rule also allows for a minimal amount of negative stability around each trim point. This recognizes the characteristics exhibited by many rotorcraft that have some airflow blockage of the vertical fin or tail rotor at small sideslip angles. This minimal amount of negative stability does not materially affect the overall safety considerations of static directional stability.

Section 27.903 Engines

This proposed rule would revise § 27.903 to add a new paragraph (d) to require engine restart capability. A restart capability is a fundamental necessity for any aircraft to minimize the risk of a forced landing. A restart capability will enhance safety, even though it will not be useful in every case such as when there is engine damage or insufficient altitude to carry out the restart procedure. A study of

accident and incident data shows a large number of engine failures or flameouts on rotorcraft with a restart capability. A number of these incidents resulted in successful in-flight restarts following failure due to causes such as snow and ice ingestion, fuel contamination, or fuel mismanagement. The data related to the accident and incident engine failures or flameouts are contained in the Docket. The proposed text, taken directly from current § 29.903(e), would require an in-flight restart capability for both single-engine and multiengine rotorcraft. We intend that restart procedures be included in the RFM.

Section 27.1587 Performance Information

Section 27.1587(a) would be revised to include a reference to new § 27.49. Section 27.1587(a)(2)(i) and (ii) would be revised to specifically include requirements for presenting maximum safe winds for OGE operations established in the proposed § 27.143. Section 27.1587(b)(1)(i) and (ii) would be deleted. These two paragraphs were moved into § 27.1585(a) by Amendment 27–21, and inadvertently left in from § 27.1587.

Section 29.1587 Performance Information

The proposal to revise § 29.1587 would require new performance information be included in the RFM. Sections 29.1587(a)(7) and 29.1587(b)(8) would be amended to include the requirements for presenting maximum safe winds for OGE operations.

Appendix B to Part 27—Airworthiness Criteria for Helicopter Instrument Flight

The proposed rule would amend paragraph (V)(a) to allow for a minimal amount of neutral or negative stability around trim and would replace the words ''in approximately constant proportion'' with ''without discontinuity.'' This is intended to be a more objective standard that does not allow irregularity in the aircraft response to control input. Also, this is consistent with the change that is proposed in § 27.177 of the VFR requirements that proposes more specific criteria to evaluate stability characteristics, but also recognizes a minimal amount of negative stability. Additionally, the proposed paragraph would require that the pilot be able to maintain the desired heading without exceptional skill or alertness. This proposed rule would also revise paragraph VII(a)(1) and VII(a)(2). This revision would reorganize the paragraphs and further specify the standards that must be met when considering a stability augmentation system failure.

Appendix B to Part 29—Airworthiness Criteria for Helicopter Instrument Flight

The proposed rule would amend paragraph (V)(a) to allow for a minimal amount of neutral or negative stability around trim and would replace the words ''in approximately constant proportion'' with ''without discontinuity.'' This is intended to be a more objective standard that does not allow irregularity in the aircraft response to control input. Also, this is consistent with the change that is proposed in § 29.177 of the VFR requirements that proposes more specific criteria to evaluate stability characteristics, but also recognizes a minimal amount of negative stability. Additionally, the proposed paragraph would require that the pilot be able to maintain the desired heading without exceptional skill or alertness. Lastly, in paragraph (V)(b)—the word ''cycle'' is replaced by the correct word, ''cyclic.''

This proposed rule would revise paragraphs VII(a)(1) and VII(a)(2). This change would reorganize the paragraphs and further specify the standards that must be met when considering a stability augmentation system failure.

Paperwork Reduction Act

This proposal contains the following new information collection requirements. As required by the Paperwork Reduction Act of 1995 (44 U.S.C. 3507(d)), the FAA has submitted the information requirements associated with this proposal to the Office of Management and Budget for review.

Title: Performance and Handling Qualities Requirements for Rotorcraft.

Summary: This proposal would revise the airworthiness standards for normal and transport category rotorcraft performance and handling qualities. This proposal would increase the current minimum safety standards to require compliance with certain current industry practices and FAA policies that result in higher safety standards, and would result in harmonized international standards. Proposed §§ 27.49(a)(3) and 27.143(d) require all applicants seeking certification for a normal category rotorcraft to determine out-of-ground effect performance data, and the proposed § 27.1587 requires that performance data be provided to operators in the RFM that must be furnished with each rotorcraft. For those applicants seeking certification for a transport category rotorcraft, proposed § 29.143(d) requires that they determine additional out-of-ground effect performance data. Proposed § 29.1587 requires that performance data, in addition to current § 29.49 and other data, be provided to operators in the RFM.

Use of: The required performance information would be determined during the certification process for various rotorcraft weights, altitudes, and temperatures and would be collected from rotorcraft certification applicants. This performance information would be inserted into the RFM and used by rotorcraft operators to determine whether their rotorcraft was capable of performing certain missions in their operating environment.

Respondents (including number of): We anticipate an average of 4 normal or transport category rotorcraft certification applicants every 10 years would be required to determine this performance information and provide it to operators in each RFM. We anticipate 50 rotorcraft are delivered for each new certification and a RFM must be furnished with each rotorcraft.

Frequency: The frequency of determining the performance data would depend on how often an applicant seeks the certification of a rotorcraft. We anticipate four new rotorcraft certifications each 10 years. This performance data would be provided when the manufacturer delivers each rotorcraft to an operator. Based on industry responses, we anticipate 50 rotorcraft are delivered per certification, resulting in 50 manuals.

Annual Burden Estimate: The performance data must be collected during each certification and disclosed in each RFM. Based on industry response, we anticipate that it would take 20 hours at $100 per hour to collect the performance data for four certifications every 10 years for an annual collection burden of $200.00 ($100 * (20/10)). We further anticipate 2 additional pages would be required to place the data in the RFM. We estimate an annual paperwork burden of 120 pages with an annual reproduction cost of $6.00. Therefore, the estimated total annual cost burden of the additional paperwork for this proposed rule would be $206.00.

The agency is soliciting comments to—

(1) Evaluate whether the proposed information requirement is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility;

(2) Evaluate the accuracy of the agency's estimate of the burden;

(3) Enhance the quality, utility, and clarity of the information to be collected; and

(4) Minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology.

Individuals and organizations may submit comments on the information collection requirement by September 25, 2006, and should direct them to the address listed in the **ADDRESSES** section of this document. Comments also should be submitted to the Office of Information and Regulatory Affairs, OMB, New Executive Building, Room 10202, 725 17th Street, NW., Washington, DC 20053, Attention: Desk Officer for FAA.

According to the 1995 amendments to the Paperwork Reduction Act (5 CFR 1320.8(b)(3)(vi)), an agency may not collect or sponsor the collection of information, nor may it impose an information collection requirement unless it displays a currently valid OMB control number. The OMB control number for this information collection will be published in the **Federal Register**, after the Office of Management and Budget approves it.

International Compatibility

In keeping with U.S. obligations under the Convention on International Civil Aviation, it is FAA policy to comply with International Civil Aviation Organization (ICAO) Standards and Recommended Practices to the maximum extent practicable. The FAA has reviewed the corresponding ICAO Standards and Recommended Practices and has identified no ''differences'' with these proposed regulations.

Executive Order 12866, DOT Regulatory Policies and Procedures, Economic Assessment, Regulatory Flexibility Determination, Trade Impact Assessment, and Unfunded Mandates Assessment

Changes to Federal regulations must undergo several economic analyses. First, Executive Order 12866 directs that each Federal agency shall propose or adopt a regulation only upon a reasoned determination that the benefits of the intended regulation justify its costs. Second, the Regulatory Flexibility Act of 1980 (Pub. L. 96–354) requires agencies to analyze the economic impact of regulatory changes on small entities. Third, the Trade Agreements Act (Pub. L. 96–39) prohibits agencies from setting standards that create unnecessary obstacles to the foreign commerce of the United States. In developing U.S. standards, this Trade Act requires agencies to consider international standards and, where appropriate, that they be the basis of U.S. standards. Fourth, the Unfunded Mandates Reform Act of 1995 (Pub. L. 104–4) requires agencies to prepare a written assessment of the costs, benefits, and other effects of proposed or final rules that include a Federal mandate likely to result in the expenditure by State, local, or tribal governments, in the aggregate, or by the private sector, of $100 million or more annually (adjusted for inflation with base year of 1995). This portion of the preamble summarizes the FAA's analysis of the economic impacts of this proposed rule. We suggest readers seeking greater detail read the full regulatory evaluation, a copy of which we have placed in the docket for this rulemaking.

In conducting these analyses, FAA has determined that this proposed rule: (1) Has benefits that justify its costs, (2) is not an economically ''significant regulatory action'' as defined in section 3(f) of Executive Order 12866, (3) is not ''significant'' as defined in DOT's Regulatory Policies and Procedures; (4) would not have a significant economic impact on a substantial number of small entities; (5) would not have a significant effect on international trade; and (6) would not impose an unfunded mandate on state, local, or tribal governments, or on the private sector by exceeding the threshold identified above. These analyses are summarized below.

Total Benefits and Costs of This Rulemaking

The estimated cost of this proposed rule is about $558,250 ($364,955 in present value). The estimated potential benefits of avoiding at least one helicopter accident are about $3.9 million ($2.7 million in present value).

Who is Potentially Affected by This Rulemaking

- Operators of U.S.-registered part 27 or 29 rotorcraft, and
- Manufacturers of those rotorcraft.

Our Cost Assumptions and Sources of Information

- Discount rate—7%.
- Period of analysis—10 years.[1]
- Value of fatality avoided—$3.0 million (Source: ''Economic Values for FAA Investment & Regulatory Decisions,'' (March 2004)).

[1] The 10-year analysis period covers our assumption that manufacturers will seek new certification for one large and one small part 27 and two large part 29 rotorcraft.

Benefits of This Rulemaking

The benefits of this NPRM consist of the value of lives and property saved due to avoiding accidents involving part 27 or part 29 rotorcraft. Over the 10-year period of analysis, the potential benefit of the NPRM would be at least $3.9 million ($2.7 million in present value) by preventing one accident.

Costs of This Rulemaking

We estimate the costs of this proposed rule to be about $558,250 ($364,955 in present value) over the 10-year analysis period. Manufacturers of 14 CFR part 27 helicopters would incur costs of $383,250 ($234,039 in present value) and manufacturers of 14 CFR part 29 helicopters would incur costs of $175,000 ($130,916 in present value).

Regulatory Flexibility Determination

The Regulatory Flexibility Act of 1980 (Pub. L. 96–354) (RFA) establishes ''as a principle of regulatory issuance that agencies shall endeavor, consistent with the objective of the rule and of applicable statutes, to fit regulatory and informational requirements to the scale of the business, organizations, and governmental jurisdictions subject to regulation.'' To achieve that principle, the RFA requires agencies to consider flexible regulatory proposals, to explain the rationale for their actions, and to solicit comments. The RFA covers a wide-range of small entities, including small businesses, not-for-profit organizations and small governmental jurisdictions.

Agencies must perform a review to determine whether a rule will have a significant economic impact on a substantial number of small entities. If the agency determines that it will, the agency must prepare a regulatory flexibility analysis as described in the RFA.

However, if an agency determines that a proposed or final rule is not expected to have a significant economic impact on a substantial number of small entities, section 605(b) of the 1980 RFA provides that the head of the agency may so certify and a regulatory flexibility analysis is not required. The certification must include a statement providing the factual basis for this determination, and the reasoning should be clear.

We use the Small Business Administration (SBA) guideline of 1,500 employees or less per firm as the criterion for the determination of a

small business in commercial air service.[2]

In order to determine if the proposed rule will have a significant economic impact on a substantial number of small entities, a list of all U.S. rotorcraft manufacturers, who must meet normal and transport category rotorcraft airworthy standards under 14 CFR parts 27 and 29, was tabulated.

Using information provided by three sources: The World Aviation Directory, Dunn and Bradstreet's company databases, and SEC filings through the Internet, we examined the publicly available revenue and employment of all these businesses, after eliminating those with more than 1,500 employees and subsidiaries of larger businesses. An example of a subsidiary business is Bell Helicopter, which is a subsidiary of Textron, Inc.

This methodology resulted in the following list of 6 U.S. part 27 rotorcraft manufactures with less than 1,500 employees. None of the part 29 rotorcraft manufacturers has 1,500 or fewer employees.

U.S. rotorcraft manufactures	Employment
Hiller Aircraft Corp.	35
Brantly Helicopter Industry	35
Enstrom Helicopter Corporation	100
Schweizer Aircraft Corporation	400
Erickson Air-Crane	500
Robinson Helicopter Company, Inc	700

The FAA expects that one large firm and one small firm will seek certification of a new part 27 normal category rotorcraft over the next ten years. Although most of the proposed requirements intended to revise the flight certification requirements are current industry standard and support new FAA rotorcraft policy, some will increase costs, while some will decrease costs. Sections 27.49, 27.143, 29.143, 27.175, 29.175, 27.177, and 27.903 will increase costs by requiring manufacturers to add additional data and testing procedures to the Rotorcraft Flight Manual (RFM). Sections 27.173 and 29.173 on static longitudinal stability would be cost relieving to the manufactures because they delete hover demonstrations not relevant to safety and are redundant with other requirements. We estimate the average compliance costs for such a small firm to be $84,500 as follows:

COMPLIANCE COSTS

Section	Cost
27.49	$21,125
27.143	26,000
27.173	(13,000)
27.175	3,250
27.177	17,875
27.903	16,250
Total	84,500

The annualized cost for this small operator is estimated at $12,030 ($84,500 X 0.142378).[3]

The degree to which a small rotorcraft manufacturer can ''afford'' the cost of compliance is determined by the availability of financial resources. The initial implementation costs of the proposed rule may come from either cash flow or be borrowed. As a proxy for the firm's ability to afford the cost of compliance, we calculated the ratio of the total annualized cost of the proposed rule as a percentage of annual revenue. None of the small business operators potentially affected by this proposed rule would incurred costs greater that 0.2 percent of their annual revenue (see table below).

U.S. rotorcraft manufactures	Employment	Annual revenue	Percentage
Hiller Aircraft Corp.	35	$7,500,000	0.16
Brantly Helicopter Industry	35	15,000,000	0.08
Enstrom Helicopter Corporation	100	35,000,000	0.03
Schweizer Aircraft Corporation	400	35,000,000	0.03
Erickson Air-Crane	500	35,000,000	0.03
Robinson Helicopter Company, Inc	700	80,000,000	0.02

As we expect only one of these companies to certificate a new rotorcraft in the next 10 years, only one would incur compliance costs. We estimated this compliance cost would be less that 0.2 percent of their total annual revenue.

Thus, we determined that no small entity would incur a substantial economic impact in the form of higher annual costs as a result of this proposed rule. Therefore, the FAA certifies that this proposal would not have a significant economic impact on a substantial number of small entities.

International Trade Impact Assessment

The Trade Agreements Act of 1979 (Pub. L. 96–39) prohibits Federal agencies from establishing any standards or engaging in related activities that create unnecessary obstacles to the foreign commerce of the United States. Legitimate domestic objectives, such as safety, are not considered unnecessary obstacles. The statute also requires consideration of international standards and, where appropriate, that they be the basis for U.S. standards. This proposed rule reflects an international effort to have common certification standards, and thus is in accord with the Trade Agreements Act.

Unfunded Mandates Assessment

Title II of the Unfunded Mandates Reform Act of 1995 (Pub. L. 104–4) requires each Federal agency to prepare a written statement assessing the effects of any Federal mandate in a proposed or final agency rule that may result in an expenditure of $100 million or more (adjusted annually for inflation with the base year 1995) in any one year by State, local, and tribal governments, in the aggregate, or by the private sector; such a mandate is deemed to be a ''significant regulatory action.'' The FAA currently uses an inflation-adjusted value of $120.7 million in lieu of $100 million. This proposed rule does not contain such a mandate. The requirements of Title II do not apply.

Executive Order 13132, Federalism

The FAA has analyzed this proposed rule under the principles and criteria of Executive Order 13132, Federalism. We determined that this action would not

[2] 13 CFR part 121.201, Size Standards Used to Define Small Business Concerns, Section 48–49 Transportation, Subsector 481 Air Transportation.

[3] Uniform Annual Value discounted at 7% over 10-year period.

have a substantial direct effect on the States, on the relationship between the national Government and the States, or on the distribution of power and responsibilities among the various levels of government, and therefore would not have federalism implications.

Regulations Affecting Intrastate Aviation in Alaska

Section 1205 of the FAA Reauthorization Act of 1996 (codified at 49 U.S.C. 40113(f)) requires the Administrator, when modifying regulations in title 14 of the CFR in a manner affecting intrastate aviation in Alaska, to consider the extent to which Alaska is not served by transportation modes other than aviation, and to establish such regulatory distinctions as he or she considers appropriate. Because this proposed rule would apply to the certification of future designs of normal and transport category rotorcraft and their subsequent operation, it could, if adopted, affect intrastate aviation in Alaska. The FAA therefore specifically requests comments on whether there is justification for applying the proposed rule differently in intrastate operations in Alaska.

Environmental Analysis

FAA Order 1050.1E identifies FAA actions that are categorically excluded from preparation of an environmental assessment or environmental impact statement under the National Environmental Policy Act in the absence of extraordinary circumstances. The FAA has determined this proposed rulemaking action qualifies for the categorical exclusion identified in paragraph 312f and involves no extraordinary circumstances.

Regulations that Significantly Affect Energy Supply, Distribution, or Use

The energy impact of the proposed rule has been assessed in accordance with the Energy Policy and Conservation Act (EPCA) Public Law 94–163, as amended (42 U.S.C. 6362) and the Department of Transportation implementing regulations, specifically 14 CFR 313.4, that defines a ''major regulatory action.'' We have determined that this notice is not a ''major regulatory action'' under the provisions of the EPCA. Additionally, we have analyzed this proposal under Executive Order 13211, Actions Concerning Regulations that Significantly Affect Energy Supply, Distribution, or Use (May 18, 2001).

We have determined that this proposed rule is not a ''significant energy action'' under the executive order because it is not a ''significant regulatory action'' under Executive Order 12866, and it is not likely to have a significant adverse effect on the supply, distribution, or use of energy.

List of Subjects

14 CFR Part 27

Air transportation, Aircraft, Aviation safety, Rotorcraft, Safety.

14 CFR Part 29

Air transportation, Aircraft, Aviation safety, Rotorcraft, Safety.

The Proposed Amendment

In consideration of the foregoing, the Federal Aviation Administration proposes to amend parts 27 and 29 of Title 14, Code of Federal Regulations, as follows:

PART 27—AIRWORTHINESS STANDARDS: NORMAL CATEGORY ROTORCRAFT

1. The authority citation for part 27 continues to read as follows:

Authority: 49 U.S.C. 106(g), 40113, 44701-44702, 44704.

2. Amend § 27.25 by adding the word ''weight'' after the word ''maximum'' and removing the word ''or'' at the end of the sentence in paragraph (a)(1)(ii); removing the word ''and'' and adding the word ''or'' in its place in paragraph (a)(1)(iii); and by adding paragraph (a)(1)(iv) to read as follows:

§ 27.25 Weight limits.

(a) * * *

(1) * * *

(iv) The highest weight in which the provisions of §§ 27.79 or 27.143(c)(1), or combinations thereof, are demonstrated if the weights and operating conditions (altitude and temperature) prescribed by those requirements cannot be met; and

* * * * *

3. Re-designate § 27.73 as new § 27.49 and revise to read as follows:

§ 27.49 Performance at minimum operating speed.

(a) For helicopters—

(1) The hovering ceiling must be determined over the ranges of weight, altitude, and temperature for which certification is requested, with—

(i) Takeoff power;

(ii) The landing gear extended; and

(iii) The helicopter in-ground effect at a height consistent with normal takeoff procedures; and

(2) The hovering ceiling determined under paragraph (a)(1) of this section must be at least—

(i) For reciprocating engine powered helicopters, 4,000 feet at maximum weight with a standard atmosphere; or

(ii) For turbine engine powered helicopters, 2,500 feet pressure altitude at maximum weight at a temperature of standard plus 22 °C (standard plus 40 °F).

(3) The out-of-ground effect hovering performance must be determined over the ranges of weight, altitude, and temperature for which certification is requested, using takeoff power.

(b) For rotorcraft other than helicopters, the steady rate of climb at the minimum operating speed must be determined over the ranges of weight, altitude, and temperature for which certification is requested, with—

(1) Takeoff power; and

(2) The landing gear extended.

4. Revise § 27.51 to read as follows:

§ 27.51 Takeoff.

The takeoff, with takeoff power and r.p.m. at the most critical center of gravity, and with weight from the maximum weight at sea level to the weight for which takeoff certification is requested for each altitude covered by this section—

(a) May not require exceptional piloting skill or exceptionally favorable conditions throughout the ranges of altitude from standard sea level conditions to the maximum altitude for which takeoff and landing certification is requested, and

(b) Must be made in such a manner that a landing can be made safely at any point along the flight path if an engine fails. This must be demonstrated up to the maximum altitude for which takeoff and landing certification is requested or 7,000 feet density altitude, whichever is less.

5. Revise § 27.75(a) to read as follows:

§ 27.75 Landing.

(a) The rotorcraft must be able to be landed with no excessive vertical acceleration, no tendency to bounce, nose over, ground loop, porpoise, or water loop, and without exceptional piloting skill or exceptionally favorable conditions, with—

(1) Approach or autorotation speeds appropriate to the type of rotorcraft and selected by the applicant;

(2) The approach and landing made with—

(i) Power off, for single engine rotorcraft and entered from steady state autorotation; or

(ii) One-engine inoperative (OEI) for multiengine rotorcraft, with each operating engine within approved operating limitations, and entered from an established OEI approach.

* * * * *

6. Amend § 27.79 by removing the word ''rotocraft'' and replacing it with

''rotorcraft'' in paragraph (b)(3) and revising paragraphs (a)(1), (a)(2) and (b)(2) to read as follows:

§ 27.79 Limiting height-speed envelope.

(a) * * *

(1) Altitude, from standard sea level conditions to the maximum altitude capability of the rotorcraft, or 7000 feet density altitude, whichever is less; and

(2) Weight, from the maximum weight at sea level to the weight selected by the applicant for each altitude covered by paragraph (a)(1) of this section. For helicopters, the weight at altitudes above sea level may not be less than the maximum weight or the highest weight allowing hovering out-of-ground effect, whichever is lower.

(b) * * *

(2) For multiengine helicopters, OEI (where engine isolation features ensure continued operation of the remaining engines), and the remaining engine(s) within approved limits and at the minimum installed specification power available for the most critical combination of approved ambient temperature and pressure altitude resulting in 7000 feet density altitude or the maximum altitude capability of the helicopter, whichever is less, and

* * * * *

7. Amend § 27.143 by revising paragraph (a)(2)(v); re-designating paragraphs (d) and (e) as paragraphs (e) and (f) respectively; revising paragraph (c); and adding a new paragraph (d) to read as follows:

§ 27.143 Controllability and maneuverability.

(a) * * *

(2) * * *

(v) Autorotation;

* * * * *

(c) Wind velocities from zero to at least 17 knots, from all azimuths, must be established in which the rotorcraft can be operated without loss of control on or near the ground in any maneuver appropriate to the type (such as crosswind takeoffs, sideward flight, and rearward flight)—

(1) With altitude, from standard sea level conditions to the maximum takeoff and landing altitude capability of the rotorcraft or 7000 feet density altitude, whichever is less; with:

(i) Critical Weight;

(ii) Critical center of gravity;

(iii) Critical rotor r.p.m.;

(2) For takeoff and landing altitudes above 7000 feet density altitude with—

(i) Weight selected by the applicant;

(ii) Critical center of gravity; and

(iii) Critical rotor r.p.m.

(d) Wind velocities from zero to at least 17 knots, from all azimuths, must be established in which the rotorcraft can be operated without loss of control out-of-ground-effect, with—

(1) Weight selected by the applicant;

(2) Critical center of gravity;

(3) Rotor r.p.m. selected by the applicant; and

(4) Altitude, from standard sea level conditions to the maximum takeoff and landing altitude capability of the rotorcraft.

* * * * *

8. Amend § 27.173 by removing the words ''a speed'' in the two places in paragraph (a) and adding the words ''an airspeed'' in both their places; removing paragraph (c); and revising paragraph (b) to read as follows:

§ 27.173 Static longitudinal stability.

* * * * *

(b) Throughout the full range of altitude for which certification is requested, with the throttle and collective pitch held constant during the maneuvers specified in § 27.175(a) through (d), the slope of the control position versus airspeed curve must be positive. However, in limited flight conditions or modes of operation determined by the Administrator to be acceptable, the slope of the control position versus airspeed curve may be neutral or negative if the rotorcraft possesses flight characteristics that allow the pilot to maintain airspeed within ±5 knots of the desired trim airspeed without exceptional piloting skill or alertness.

9. Amend § 27.175 by removing paragraph (d); revising the introductory text in paragraphs (a) and (b); revising paragraphs (b)(3) and (b)(5); re-designating paragraph (c) as (d) and revising re-designated paragraph (d); and adding a new paragraph (c) to read as follows:

§ 27.175 Demonstration of static longitudinal stability.

(a) *Climb.* Static longitudinal stability must be shown in the climb condition at speeds from Vy − 10 kt, to Vy + 10 kt with—

* * * * *

(b) *Cruise.* Static longitudinal stability must be shown in the cruise condition at speeds from 0.8 V_{NE} − 10 kt to 0.8 V_{NE} + 10 kt or, if V_H is less than 0.8 V_{NE}, from V_H -10 kt to V_H + 10 kt, with—

* * * * *

(3) Power for level flight at 0.8 V_{NE} or V_H, whichever is less;

* * * * *

(5) The rotorcraft trimmed at 0.8 V_{NE} or V_H, whichever is less.

(c) V_{NE}. Static longitudinal stability must be shown at speeds from V_{NE} − 20 kt to V_{NE} with—

(1) Critical weight;

(2) Critical center of gravity;

(3) Power required for level flight at V_{NE} − 10 kt or maximum continuous power, whichever is less;

(4) The landing gear retracted; and

(5) The rotorcraft trimmed at V_{NE} − 10 kt.

(d) *Autorotation.* Static longitudinal stability must be shown in autorotation at—

(1) Airspeeds from the minimum rate of descent airspeed − 10 kt to the minimum rate of descent airspeed + 10 kt, with—

(i) Critical weight;

(ii) Critical center of gravity;

(iii) The landing gear extended; and

(iv) The rotorcraft trimmed at the minimum rate of descent airspeed.

(2) Airspeeds from best angle-of-glide airspeed − 10 kt to the best angle-of-glide airspeed + 10 kt, with—

(i) Critical weight;

(ii) Critical center of gravity;

(iii) The landing gear retracted; and

(iv) The rotorcraft trimmed at the best angle-of-glide airspeed.

10. Revise § 27.177 to read as follows:

§ 27.177 Static directional stability.

(a) The directional controls must operate in such a manner that the sense and direction of motion of the rotorcraft following control displacement are in the direction of the pedal motion with the throttle and collective controls held constant at the trim conditions specified in § 27.175 (a), (b), and (c). Sideslip angles must increase with steadily increasing directional control deflection for sideslip angles up to the lesser of—

(1) ±25 degrees from trim at a speed of 15 knots less than the speed for minimum rate of descent varying linearly to (10 degrees from trim at V_{NE};

(2) The steady state sideslip angles established by § 27.351;

(3) A sideslip angle selected by the applicant, which corresponds to a sideforce of at least 0.1g; or,

(4) The sideslip angle attained by maximum directional control input.

(b) Sufficient cues must accompany the sideslip to alert the pilot when the aircraft is approaching the sideslip limits.

(c) During the maneuver specified in paragraph (a) of this section, the sideslip angle versus directional control position curve may have a negative slope within a small range of angles around trim, provided the desired heading can be maintained without exceptional piloting skill or alertness.

11. Amend § 27.903 by adding a new paragraph (d) to read as follows:

§ 27.903 Engines.

* * * * *

(d) *Restart capability:* A means to restart any engine in flight must be provided.

(1) Except for the in-flight shutdown of all engines, engine restart capability must be demonstrated throughout a flight envelope for the rotorcraft.

(2) Following the in-flight shutdown of all engines, in-flight engine restart capability must be provided.

12. Amend § 27.1587 by removing paragraphs (b)(1)(i) and (b)(1)(ii) and revising the introductory text in paragraph (a) and paragraphs (a)(2)(i) and (a)(2)(ii) to read as follows:

§ 27.1587 Performance information.

(a) The Rotorcraft Flight Manual must contain the following information, determined in accordance with §§ 27.49 through 27.79 and 27.143(c) and (d):

* * * * *

(2) * *

(i) The steady rates of climb and decent, in-ground effect and out-of-ground effect hovering ceilings, together with the corresponding airspeeds and other pertinent information including the calculated effects of altitude and temperatures;

(ii) The maximum weight for each altitude and temperature condition at which the rotorcraft can safely hover in-ground effect and out-of-ground effect in winds of not less than 17 knots from all azimuths. These data must be clearly referenced to the appropriate hover charts. In addition, if there are other combinations of weight, altitude and temperature for which performance information is provided and at which the rotorcraft cannot land and takeoff safely with the maximum wind value, those portions of the operating envelope and the appropriate safe wind conditions must be stated in the Rotorcraft Flight Manual;

* * * * *

13. Amend APPENDIX B TO PART 27—AIRWORTHINESS CRITERIA FOR HELICOPTER INSTRUMENT FLIGHT by revising paragraphs V(a) and VII(a) to read as follows:

Appendix B to Part 27—Airworthiness Criteria for Helicopter Instrument Flight

* * * * *

V. Static lateral-directional stability.

(a) Static directional stability must be positive throughout the approved ranges of airspeed, power, and vertical speed. In straight and steady sideslips up to ±10° from trim, directional control position must increase without discontinuity with the angle of sideslip, except for a small range of sideslip angles around trim. At greater angles up to the maximum sideslip angle appropriate to the type, increased directional control position must produce an increased angle of sideslip. It must be possible to maintain balanced flight without exceptional pilot skill or alertness.

* * * * *

VII. Stability Augmentation System (SAS).

(a) If a SAS is used, the reliability of the SAS must be related to the effects of its failure. Any SAS failure that would prevent continued safe flight and landing must be extremely improbable. It must be shown that, for any failure of the SAS that is not shown to be extremely improbable—

(1) The helicopter is safely controllable when the failure or malfunction occurs at any speed or altitude within the approved IFR operating limitations; and

(2) The overall flight characteristics of the helicopter allow for prolonged instrument flight without undue pilot effort. Additional unrelated probable failures affecting the control system must be considered. In addition—

(i) The controllability and maneuverability requirements in Subpart B of this part must be met throughout a practical flight envelope;

(ii) The flight control, trim, and dynamic stability characteristics must not be impaired below a level needed to allow continued safe flight and landing; and

(iii) The static longitudinal and static directional stability requirements of Subpart B must be met throughout a practical flight envelope.

* * * * *

PART 29—AIRWORTHINESS STANDARDS: TRANSPORT CATEGORY ROTORCRAFT

14. The authority citation for part 29 continues to read as follows:

Authority: 49 U.S.C. 106(g), 40113, 44701–44702, 44704.

15. Amend § 29.25 by adding paragraph (a)(4) to read as follows:

§ 29.25 Weight limits.

(a) * * *

(4) For Category B rotorcraft with 9 or less passenger seats, the maximum weight, altitude, and temperature at which the rotorcraft can safely operate near the ground with the maximum wind velocity determined under § 29.143(c) and may include other demonstrated wind velocities and azimuths. The operating envelopes must be stated in the Limitations section of the Rotorcraft Flight Manual.

* * * * *

16. Amend § 29.143 by revising paragraph (a)(2)(v); re-designating paragraphs (d) and (e) as paragraphs (e) and (f) respectively; revising paragraph (c); and adding a new paragraph (d) to read as follows:

§ 29.143 Controllability and maneuverability.

(a) * * *

(2) * * *

(v) Autorotation; and

* * * * *

(c) Wind velocities from zero to at least 17 knots, from all azimuths, must be established in which the rotorcraft can be operated without loss of control on or near the ground in any manner appropriate to the type (such as crosswind takeoffs, sideward flight, and rearward flight), with—

(1) Critical weight;

(2) Critical center of gravity;

(3) Critical rotor r.p.m.; and

(4) Altitude, from standard sea level conditions to the maximum takeoff and landing altitude capability of the rotorcraft.

(d) Wind velocities from zero to at least 17 knots, from all azimuths, must be established in which the rotorcraft can be operated without loss of control out-of-ground effect, with—

(1) Weight selected by the applicant;

(2) Critical center of gravity;

(3) Rotor r.p.m. selected by the applicant; and

(4) Altitude, from standard sea level conditions to the maximum takeoff and landing altitude capability of the rotorcraft.

* * * * *

17. Amend § 29.173 by removing the words ''a speed'' in the two places in paragraph (a) and adding the words ''an airspeed'' in their places; removing paragraph (c); and revising paragraph (b) to read as follows:

§ 29.173 Static longitudinal stability.

* * * * *

(b) Throughout the full range of altitude for which certification is requested, with the throttle and collective pitch held constant during the maneuvers specified in § 29.175(a) through (d), the slope of the control position versus airspeed curve must be positive. However, in limited flight conditions or modes of operation determined by the Administrator to be acceptable, the slope of the control position versus airspeed curve may be neutral or negative if the rotorcraft possesses flight characteristics that allow the pilot to maintain airspeed within (5 knots of the desired trim airspeed without exceptional piloting skill or alertness.

18. Revise § 29.175 to read as follows:

§ 29.175 Demonstration of static longitudinal stability.

(a) *Climb.* Static longitudinal stability must be shown in the climb condition at speeds from Vy − 10 kt, to Vy + 10 kt with—

(1) Critical weight;

(2) Critical center of gravity;

(3) Maximum continuous power;

(4) The landing gear retracted; and
(5) The rotorcraft trimmed at Vy.
(b) *Cruise.* Static longitudinal stability must be shown in the cruise condition at speeds from 0.8 V_{NE} − 10 kt to 0.8 V_{NE} + 10 kt or, if V_H is less than 0.8 V_{NE}, from V_H − 10 kt to V_H + 10 kt, with—
(1) Critical weight;
(2) Critical center of gravity;
(3) Power for level flight at 0.8 V_{NE} or V_H, whichever is less;
(4) The landing gear retracted; and
(5) The rotorcraft trimmed at 0.8 V_{NE} or V_H, whichever is less.
(c) *V_{NE}* . Static longitudinal stability must be shown at speeds from V_{NE} − 20 kt to V_{NE} with—
(1) Critical weight;
(2) Critical center of gravity;
(3) Power required for level flight at V_{NE} − 10 kt or maximum continuous power, whichever is less;
(4) The landing gear retracted; and
(5) The rotorcraft trimmed at V_{NE} − 10 kt.
(d) *Autorotation.* Static longitudinal stability must be shown in autorotation at—
(1) Airspeeds from the minimum rate of descent airspeed − 10 kt to the minimum rate of descent airspeed + 10 kt, with—
(i) Critical weight;
(ii) Critical center of gravity;
(iii) The landing gear extended; and
(iv) The rotorcraft trimmed at the minimum rate of descent airspeed.
(2) Airspeeds from the best angle-of-glide airspeed − 10kt to the best angle-of-glide airspeed + 10kt, with—
(i) Critical weight;
(ii) Critical center of gravity;
(iii) The landing gear retracted; and
(iv) The rotorcraft trimmed at the best angle-of-glide airspeed.

19. Revise § 29.177 to read as follows:

§ 29.177 Static directional stability.

(a) The directional controls must operate in such a manner that the sense and direction of motion of the rotorcraft following control displacement are in the direction of the pedal motion with throttle and collective controls held constant at the trim conditions specified in § 29.175 (a), (b), (c), and (d). Sideslip angles must increase with steadily increasing directional control deflection for sideslip angles up to the lesser of—
(1) ±25 degrees from trim at a speed of 15 knots less than the speed for minimum rate of descent varying linearly to ±10 degrees from trim at V_{NE};
(2) The steady-state sideslip angles established by § 29.351;
(3) A sideslip angle selected by the applicant, which corresponds to a sideforce of at least 0.1g; or
(4) The sideslip angle attained by maximum directional control input.
(b) Sufficient cues must accompany the sideslip to alert the pilot when approaching sideslip limits.
(c) During the maneuver specified in paragraph (a) of this paragraph, the sideslip angle versus directional control position curve may have a negative slope within a small range of angles around trim, provided the desired heading can be maintained without exceptional piloting skill or alertness.

20. Amend § 29.1587 by revising paragraph (a)(7) and (b)(8) to read as follows:

§ 29.1587 Performance information.

* * * * *

(a) * * *
(7) Out-of-ground effect hover performance determined under § 29.49 and the maximum weight for each altitude and temperature condition at which the rotorcraft can safely hover in-ground effect and out-of-ground effect in winds of not less than 17 knots from all azimuths. These data must be clearly referenced to the appropriate hover charts.
(b) * * *
(8) Out-of-ground effect hover performance determined under § 29.49 and the maximum safe wind demonstrated under the ambient conditions for data presented. In addition, the maximum weight for each altitude and temperature condition at which the rotorcraft can safely hover in-ground-effect and out-of-ground-effect in winds of not less than 17 knots from all azimuths. These data must be clearly referenced to the appropriate hover charts; and

* * * * *

21. Amend APPENDIX B TO PART 29—AIRWORTHINESS CRITERIA FOR HELICOPTER INSTRUMENT FLIGHT by amending paragraph (V)(b) by removing the word ''cycle'' and adding the word ''cyclic'' in its place; and revising paragraphs V(a) and VII(a) to read as follows:

APPENDIX B TO PART 29—AIRWORTHINESS CRITERIA FOR HELICOPTER INSTRUMENT FLIGHT

* * * * *

V. Static lateral directional stability.
(a) Static directional stability must be positive throughout the approved ranges of airspeed, power, and vertical speed. In straight and steady sideslips up to ±10° from trim, directional control position must increase without discontinuity with the angle of sideslip, except for a small range of sideslip angles around trim. At greater angles up to the maximum sideslip angle appropriate to the type, increased directional control position must produce an increased angle of sideslip. It must be possible to maintain balanced flight without exceptional pilot skill or alertness.

* * * * *

VII. Stability Augmentation System (SAS).
(a) If a SAS is used, the reliability of the SAS must be related to the effects of its failure. Any SAS failure that would prevent continued safe flight and landing must be extremely improbable. It must be shown that, for any failure of the SAS that is not shown to be extremely improbable—
(1) The helicopter is safely controllable when the failure or malfunction occurs at any speed or altitude within the approved IFR operating limitations; and
(2) The overall flight characteristics of the helicopter allow for prolonged instrument flight without undue pilot effort. Additional unrelated probable failures affecting the control system must be considered. In addition—
(i) The controllability and maneuverability requirements in Subpart B must be met throughout a practical flight envelope;
(ii) The flight control, trim, and dynamic stability characteristics must not be impaired below a level needed to allow continued safe flight and landing;
(iii) For Category A helicopters, the dynamic stability requirements of Subpart B must also be met throughout a practical flight envelope; and
(iv) The static longitudinal and static directional stability requirements of Subpart B must be met throughout a practical flight envelope.

* * * * *

Issued in Washington, DC, on July 18, 2006,

Dorenda D. Baker,

Acting Director, Aircraft Certification Service.

[FR Doc. E6–11726 Filed 7–24–06; 8:45 am]

BILLING CODE 4910–13–P

Federal Register

Tuesday,
July 25, 2006

Part IV

Department of Labor

Office of the Secretary

Delegation of Authorities and Assignment of Responsibilities to the Assistant Secretary for Policy; Notice

DEPARTMENT OF LABOR

Office of the Secretary

[Secretary's Order 13–2006]

Delegation of Authorities and Assignment of Responsibilities to the Assistant Secretary for Policy

1. Purpose

To define and delegate authorities and responsibilities to the Assistant Secretary for Policy.

2. Authorities and Directives Affected

A. Authorities.

This Order is issued pursuant to 29 U.S.C. 551 *et seq.*; 5 U.S.C. 301; Reorganization Plan No. 6 of 1950 (5 U.S.C. Appendix 1); 5 U.S.C. 5315; the Regulatory Flexibility Act, as amended by the Small Business Regulatory Enforcement Fairness Act [see 5 U.S.C. 601 *et seq.* and 15 U.S.C. 657]; Executive Order 12866, ''Regulatory Planning and Review'' (September 30, 1993), as amended by Executive Order 13258 (February 26, 2002); and Executive Order 13272, ''Proper Consideration of Small Entities in Agency Rulemaking'' (August 13, 2002).

B. Directives Affected

(1) This Order does not affect the authorities and responsibilities assigned by any other Secretary's Order, unless otherwise expressly so provided in this or another Order.

(2) Secretary's Order 2–2002, which delegated authority and assigned responsibilities to the Assistant Secretary for Policy (OASP), is cancelled.

(3) This Order does not affect Secretary's Order 2–2005, which establishes policy and assigns responsibilities for the management of Department of Labor enterprise communication services, including Internet and intranet Web sites, telephone contact centers, electronic correspondence, translation services, and similar activities.

(4) This Order does not affect the procurement and contracting authority of the Assistant Secretary for Administration and Management. (see Secretary's Order 4–76.)

3. Background

The Office of the Assistant Secretary for Policy (OASP) has since its inception provided advice and assistance to the Secretary and Deputy Secretary in a number of areas, including policy development, program implementation, program evaluations, research, budget and performance analysis, and legislative and other policy support. The Secretary of Labor advises the President and represents the Department of Labor (DOL or Department) in Cabinet deliberations dealing with significant and complex regulatory and programmatic policy and legislative issues, and issues related to economic data and trends, particularly as they impact preparing the American workforce for the 21st century economy. The accelerating rate of technological and economic change compels the need for a cadre of skilled analysts available to the Secretary who can respond quickly to urgent policy and programmatic matters. Thus, this Order sets forth OASP's role of providing support, analysis, and advice to the Secretary and Deputy Secretary on policy, programmatic, economic, technical, regulatory, and compliance assistance issues.

This Order describes current OASP responsibilities, delineates additional responsibilities, and realigns the offices within OASP to include the Office of Economic Policy and Analysis, the Office of Regulatory and Programmatic Policy, and the Office of Compliance Assistance Policy. This Order eliminates the Office of Research and Technology Policy, and consolidates the former Offices of Regulatory Policy and of Programmatic Policy into one office to address both programmatic and regulatory policy development and analysis. The Order also addresses OASP's role with respect to the Policy Planning Board (see Secretary's Order XX–2006); Executive Order 12866 and related guidance from the Office of Management and Budget's Office of Information and Regulatory Affairs; the requirements of the Regulatory Flexibility Act, as amended by the Small Business Regulatory Enforcement Fairness Act (SBREFA); and the administration of the DOL Working Partners for an Alcohol- and Drug-Free Workplace program.

This Order and Secretary's Order 4–2002 (Office of Small Business Programs) consolidate and restructure the Department's compliance assistance programs, enhancing policy coordination. Compliance assistance is an essential and integral part of how the Department conducts its business and fulfills its mission. In order to avert and deter violations of wage, safety, employee benefits, and other laws that it administers, the Department must offer strong, effective compliance assistance programs. Employers and employees must have access to clear, accurate, and understandable information on achieving compliance with laws under the Department's jurisdiction. Under this Order, OASP has the responsibility of assuring the full, effective, and resourceful implementation of the Department's compliance assistance initiatives.

Finally, consistent with Secretary's Order 09–2006, (Office of Job Corps), this Order sets forth OASP's responsibilities related to the Office of Job Corps.

4. Delegation of Authorities and Assignment of Responsibilities

A. *The Assistant Secretary for Policy* is delegated authority and assigned responsibility for:

(1) Advising the Secretary and Deputy Secretary and supervising the preparation of studies, analyses, public statements and other policy statements with respect to the Secretary's duties in the areas of regulatory, programmatic and compliance assistance policy and economic policy formulation, including the impact of Departmental policies and programs on general economic policy.

(2) Consistent with Secretary's Order 12–2006, providing analytic and administrative leadership and support for the Department's Policy Planning Board.

(3) Establishing the following offices and positions within OASP:

(a) An Office of Compliance Assistance Policy, to be headed by a Director, which will implement, manage, and coordinate Departmental compliance assistance policies, initiatives and programs, including Department-wide cross-cutting initiatives.

(b) An Office of Economic Policy and Analysis, to be headed by a Chief Economist, which will implement, manage, and coordinate Departmental economic policy, research and analysis.

(c) An Office of Regulatory and Programmatic Policy, to be headed by a Director, which will implement, manage, and coordinate Departmental regulatory and programmatic policy, and serve as the Departmental liaison with the Office of the Federal Register.

(4) Providing the analytical support required by the Secretary, Deputy Secretary, and Policy Planning Board with respect to policy issues and trends that require economic analyses or other expertise, including:

(a) Providing analysis of issues in the macroeconomic and microeconomic policy areas.

(b) Preparing recommendations and analyses with respect to long- and short-term economic trends, preparing economic studies and analyses related to the formulation of policy, and preparing economic analyses relating to economic impact of Departmental

policies, regulations, and programs on general administration policy within the United States.

(5) In consultation with the Office of the Solicitor, representing the Secretary in a variety of forums attended by officials in the government and with appropriate outside parties and maintaining continuous and personal liaison with those groups and the White House on matters involving policy, Departmental programs, economic issues, regulations, or compliance assistance.

(6) Reviewing cross-cutting activities within the Department as they pertain to the Secretary's broader policy functions, including Government Performance Results Act and other Departmental reports, budget and legislative proposals, and Congressional reports, and coordinating selected reports to OMB and other agencies.

(7) Providing analysis and advice to the Secretary and Deputy Secretary on policies and programs related to developing, implementing and institutionalizing compliance assistance initiatives, including reviewing Agency compliance assistance plans, identifying and promoting best practices and providing leadership and coordination in creating departmental compliance assistance tools, such as elaws Advisors and small business guides.

(8) Compiling economic data and analysis for the Secretary and Deputy Secretary on current economic developments.

(9) Conducting appropriate research, analysis and evaluation activities in accord with the Secretary's selected priorities.

(10) Preparing and providing analysis and advice to the Secretary, Deputy Secretary and PPB on the Departmental research agenda, including all current, recently completed or planned Agency research projects.

(11) Advising the Secretary, Deputy Secretary and Director of the Office of Jobs Corps on research, evaluations and policy initiatives related to the Job Corps program.

(12) In consultation with the Office of the Solicitor, providing general oversight of, and guidance for, the Department's compliance with the Regulatory Flexibility Act, as amended by SBREFA, and related laws (including EO 12866, EO 13272, or similar executive orders), including such activities as:

(a) Developing and implementing the written Departmental policies and procedures concerning the potential impact of draft rules on small entities, as required by Section 3(a) of EO 13272.

(b) Providing analysis, guidance, review, and technical assistance, as necessary, to program agencies which are preparing required studies such as regulatory impact and flexibility studies.

(c) Providing guidance and technical assistance, as necessary, to program agencies during the Small Business Advocacy Review Panel process (if applicable).

(d) Preparing, coordinating, and reviewing the Department's Semi-Annual Regulatory Agenda and Semi-Annual Peer Review Agenda.

(e) In coordination with the Office of Small Business Programs, acting as the Department's liaison with the Small Business Administration (SBA), including its Chief Counsel for Advocacy and Office of the National Ombudsman.

(f) Consistent with Secretary's Order 12–2006, providing analysis for the Policy Planning Board.

(11) Administering the Department's Working Partners for an Alcohol and Drug-Free Workplace Program and its Small Business Initiative.

(12) Coordinating and consulting, as appropriate, with other DOL agencies in fulfilling the above responsibilities.

(13) Performing any additional or similar duties that may be assigned by the Secretary.

B. *The Assistant Secretary for Administration and Management* is delegated authority and assigned responsibility for:

(1) Ensuring that any transfer of budgetary resources arising from this Order is fully consistent with the established requirements of the Department.

(2) Ensuring that appropriate administrative and management support is furnished, as required, for the efficient and effective operation of these programs.

C. *The Solicitor of Labor* is responsible for providing legal advice and assistance to all Department of Labor officials relating to implementation and administration of all aspects of this Order.

D. *DOL Agency heads* are responsible for coordinating with OASP on policies and activities relating to the mission of their respective agencies, including:

(1) In consultation with the Office of the Solicitor, fulfilling the requirements of the Regulatory Flexibility Act, as amended by SBREFA, and related laws, including appropriate coordination with small entities in the development of rules, production of plain language compliance guides, and responding to requests for information.

(2) Ensuring that reports requested by OASP concerning the achievement of the objectives of this order are accurate and submitted in a timely manner.

5. Reservation of Authority and Responsibility

A. The submission of reports and recommendations to the President and the Congress concerning the administration of statutory or administrative provisions is reserved to the Secretary.

B. This Secretary's Order does not affect the authorities or responsibilities of the Office of the Inspector General under the Inspector General Act of 1978, as amended, or under Secretary's Order 4–2006 (February 21, 2006).

6. Redelegation/Reassignment of Authority

All authorities and responsibilities enumerated in this Order may be redelegated or reassigned within OASP.

7. Effective Date

This Order is effective immediately.

Dated: July 10, 2006.

Elaine L. Chao,

Secretary of Labor.

[FR Doc. 06–6445 Filed 7–24–06; 8:45 am]

BILLING CODE 4510–23–P

Federal Register

Tuesday,
July 25, 2006

Part V

Department of Labor

Office of the Secretary

Establishment of the Policy Planning Board; Notice

DEPARTMENT OF LABOR

Office of the Secretary

[Secretary's Order 12–2006]

Establishment of the Policy Planning Board

1. Purpose

To establish the Policy Planning Board (PPB or the Board) as a Department of Labor (DOL or Department)-wide forum responsible for reviewing, developing, and advancing all major Departmental or Agency policy initiatives.

2. Authority and Directives Affected

A. *Authority.* This Order is issued pursuant to 29 U.S.C. 551 *et seq.*; 5 U.S.C. 301; Reorganization Plan N. 6 of 1950 (5 U.S.C. Appendix 1); the Regulatory Flexibility Act, as amended by the Small Business Regulatory Enforcement Fairness Act [see 5 U.S.C. 601 *et seq.* and 15 U.S.C. 657]; and Executive Order 12866, ''Regulatory Planning and Review'' (September 30, 1993), as amended by Executive Order 13258 (February 26, 2002).

B. *Directives Affected.*

(1) This Order does not affect the authorities and responsibilities assigned by any other Secretary's Order, unless otherwise expressly so provided in this or another Order.

(2) Secretary's Order 3–2002, concerning the Policy Planning Board, is cancelled.

(3) This Order does not affect the procurement and contracting authority of the Assistant Secretary for Administration and Management (see Secretary's Order 4–76).

(4) This Order does not affect the authority of the Management Review Board under Secretary's Orders 3–2003 and 5–2001.

(5) This Order does not affect the Chief Information Officer's duties under the Paperwork Reduction Act (see Secretary's Order 3–2003).

3. Background

By a June 2001 memorandum, the Secretary of Labor created the PPB in order to ensure that major Departmental or Agency policy initiatives, and initiatives that cut across agency lines or require interdepartmental coordination, are fully considered by the appropriate DOL agencies, that such initiatives are consistent with Department and Administration policy, and that implementation of policies is coherent and responsible. This Order reaffirms the establishment of the PPB within the Department.

4. Board Composition and Process

A. *Chairs.* The PPB will be co-chaired by the Deputy Secretary and the Assistant Secretary for Policy. If neither the Deputy Secretary nor the Assistant Secretary for Policy is able to attend a meeting, that meeting will be chaired by their deputy or designee.

B. *Membership.* The membership of the PPB will be determined periodically by the Secretary, but will consist solely of heads of DOL agencies or offices.

C. *Process.*

(1) The PPB will meet as necessary.

(2) All meetings will be convened by one or both chairs with sufficient advance notice to promote full member participation.

(3) Not all PPB items require a Board meeting. The PPB chairs, after consultation with the action agency, may decide to circulate a proposed action to the necessary Board members for review without a meeting. Should such a ''fast track'' review result in identification of previously unforeseen issues, a Board meeting may be called by either chair.

(4) Following PPB deliberations, one or both chairs will advise the Secretary of PPB recommendations. Where PPB recommendations are not unanimously adopted, dissenting recommendations shall be submitted to the Secretary with the PPB recommendation, at the request of any dissenting members.

(5) The Secretary will make all final decisions on PPB matters. One or both chairs (or their designees) will advise members of the Secretary's final decision.

(6) The PPB may establish such standing or special ad-hoc workgroups, as appropriate, to implement agreed-upon activities and projects. Chairs of these workgroups shall report to the chairs of the PPB.

(7) Participation in Board and Workgroup meetings is limited to Federal Government officials.

D. *Confidentiality.* All PPB documents, discussions, recommendations and decisions are confidential and may be discussed with others only on a ''need-to-know'' basis.

5. Delegation of Authority and Assignment of Responsibility

A. *The Policy Planning Board* is delegated authority and assigned responsibility for coordinating all major Departmental or Agency policy initiatives and recommending the best course of action to the Secretary, including:

(1) Ensuring that all major policy options are considered, and that initiatives are consistent with Administration policy.

(2) Reviewing and making recommendations regarding Departmental or Agency regulatory actions; regulatory policy directives (for example, interpretive bulletins and administrative opinion letters); the Department's Semi-Annual Regulatory Agenda and Semi-Annual Peer Review Agenda; any other significant actions to be published in the **Federal Register**; and all new survey programs, renewals of survey programs with a large paperwork burden, or renewals of significant survey programs.

(3) Reviewing Agency annual compliance assistance plans and enforcement plans and all new significant Departmental or Agency enforcement initiatives.

(4) Consistent with Secretary's Order 11–2006 (Legislative Clearance Process; Drafting Legislative Proposals), considering all legislative proposals initiated by the Department and, upon recommendation by the Office of Congressional and Intergovernmental Affairs (OCIA) and the Office of the Solicitor (SOL), considering the impact of certain legislative proposals initiated by the Congress or other Executive Departments.

(5) Considering all proposals related to the initiation or formation of an advisory board, negotiated rulemaking committee, or similar body that includes members from outside of DOL.

(6) Reviewing a Departmental research agenda, including current, recently completed or planned Agency research projects.

(7) Developing and advancing cross-cutting Departmental policy initiatives.

(8) Performing any additional or similar duties which may be assigned by the Secretary.

B. *The Deputy Secretary* is responsible for attending PPB meetings, acting as co-chair of the PPB, advising the Secretary of PPB recommendations, and ensuring that PPB members are advised of the Secretary's final decisions on PPB matters. If the Deputy Secretary cannot attend a PPB meeting, he or she may designate an associate deputy or other suitable representative to attend.

C. *The Assistant Secretary for Policy* is responsible for maintaining the PPB agenda and providing analytic and administrative leadership and support for the PPB, including:

(1) Attending PPB meetings, acting as co-chair of the PPB, advising the Secretary of PPB recommendations, and ensuring that PPB members are advised of the Secretary's final decisions on PPB matters. If the Assistant Secretary cannot attend a PPB meeting, he or she may designate a deputy or other suitable

representative of the Assistant Secretary to attend.

(2) Designating a staff coordinator(s) to provide administrative leadership and support for the PPB.

(3) Preparing, coordinating and reviewing the Department's Semi-Annual Regulatory Agenda and the Semi-Annual Peer Review Agenda, prior to PPB review and decision.

(4) Preparing procedural requirements and timetables applicable to Agency submissions to the PPB.

(5) Working with DOL agencies to identify issues or initiatives requiring PPB consideration and to ensure that all necessary related information is provided to the PPB.

(6) Promoting participation by DOL agencies on the PPB.

(7) Consistent with Secretary's Order 11–2006 (Legislative Clearance Process; Drafting Legislative Proposals), working with OCIA and SOL to staff and schedule legislative items identified by those offices for Board consideration.

(8) Working with DOL agency and SOL staff to facilitate review of items by OMB.

(9) Maintaining minutes of PPB meetings, including decisions and assignments.

(10) Maintaining a password-protected, non-public Web site on the DOL's LaborNet that includes PPB meeting schedules; agendas for each PPB meeting; agency memoranda to the PPB and accompanying materials; the Board's recommendations; the Secretary's decisions; status reports; resources, such as supplemental PPB policy and procedures and the DOL Regulatory Handbook; and any other items identified by the PPB or its members.

(11) Preparing a weekly summary of items that agencies intend to publish in the **Federal Register** in the upcoming week.

(12) Compiling a Departmental research agenda, including current, recently completed or planned Agency research projects.

D. *The Assistant Secretary for Administration and Management* is responsible for providing any support or advice required by the Board or Secretary.

E. *The Assistant Secretary for Congressional and Intergovernmental Affairs* is responsible for:

(1) Recommending, in conjunction with SOL, legislative proposals initiated by the Congress or other Executive Departments to the PPB for consideration.

(2) Working with the Office of the Assistant Secretary for Policy (OASP) and SOL to staff and schedule legislative items identified for PPB consideration.

(3) Attending all PPB meetings or, if unable to do so, designating a deputy or other suitable representative of the Assistant Secretary to attend.

F. *The Assistant Secretary for Public Affairs* is responsible for attending all PPB meetings, or, if unable to do so, designating a deputy or other suitable representative of the Assistant Secretary to attend.

G. *The Solicitor of Labor* is responsible for:

(1) Providing legal advice and assistance to all DOL officials relating to implementation and administration of all aspects of this Order.

(2) Recommending, in conjunction with OCIA, legislative proposals initiated by the Congress or other Executive Departments to the PPB for consideration.

(3) Working with OASP and OCIA to staff and schedule legislative items identified for PPB consideration.

(4) Attending all PPB meetings, or, if unable to do so, designating a deputy or other suitable representative of the Solicitor to attend.

H. All *DOL Agency Heads* are responsible for:

(1) Attending PPB meetings when an item being discussed has a potential impact on their respective agencies' policies and providing to the PPB the perspective of their respective agencies on matters before the PPB. If an Agency Head cannot attend a meeting, he or she may designate a deputy or other suitable representative of the Agency Head to attend.

(2) Seeking PPB consideration of policy initiatives that relate to their respective agencies' mission and responsibilities, including:

(a) Agency regulatory actions; regulatory policy directives (for example, interpretive bulletins and administrative opinion letters); any other significant actions to be published in the **Federal Register**; and all new survey programs, renewals of survey programs with a large paperwork burden, or renewals of significant survey programs.

(b) Annual compliance assistance plans and enforcement plans and significant new enforcement initiatives.

(c) Programmatic, legislative and/or policy initiatives involving significant Administration, Congressional or constituent interest (for example, outreach campaigns, program implementation plans, or precedential interpretations of laws or regulations).

(d) All proposals related to the initiation or formation of an advisory board, negotiated rulemaking committee, or similar body that includes members from outside DOL.

(e) All current, recently completed or planned Agency research projects, as part of the Departmental research agenda.

If an agency is not sure that an item requires PPB review, it should discuss the item with OASP.

(3) Preparing documents for PPB discussion, recommendation and decision in accordance with the procedures and timetables established by OASP, to ensure that all information necessary to PPB review is compiled and submitted to the PPB in a timely manner.

(4) Justifying all requests for ''fast track'' approval.

(5) Including OASP and SOL in consultations with OMB on all items approved by the PPB.

(6) Cooperating with OASP in preparing the weekly summary of items that will be published in the **Federal Register** under Section 5(c)(11) of this Order.

I. All *PPB Members* are responsible for:

(1) Ensuring their appropriate involvement with the duties delegated to the PPB membership.

(2) Assisting in preparations of documents for PPB discussions, recommendations, and decisions.

(3) Performing any additional or similar duties that may be assigned by the Secretary.

6. Reservation of Authority and Responsibility

A. The submission of reports and recommendations to the President and the Congress concerning the administration of statutory or administrative provisions is reserved to the Secretary.

B. This Secretary's Order does not affect the authorities or responsibilities of the Office of the Inspector General under the Inspector General Act of 1978, as amended, or under Secretary's Order 04–2006 (February 21, 2006).

7. Effective Date

This Order is effective immediately.

Dated: July 10, 2006.

Elaine L. Chao,

Secretary of Labor.

[FR Doc. 06–6446 Filed 7–24–06; 8:45 am]

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Federal Register

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FEDERAL REGISTER PAGES AND DATE, JULY

CFR PARTS AFFECTED DURING JULY

At the end of each month, the Office of the Federal Register publishes separately a List of CFR Sections Affected (LSA), which lists parts and sections affected by documents published since the revision date of each title.

44 CFR

64.....38780, 41172
67.....40925
206.....40025

Proposed Rules:

67 .....40955, 40978, 40980

45 CFR

Proposed Rules:

1356.....40346

46 CFR

Proposed Rules:

401.....39629

47 CFR

1 .....38091, 38781, 39592
15.....39229
22.....38091
24.....38091
54.....38266, 38781
64.....38091, 38268
73 .....39231, 39232, 39233, 40927

Proposed Rules:

1.....38564
2.....38564
4.....38564
6.....38564
7.....38564
9.....38564
11.....38564
13.....38564
15.....38564
17.....38564
18.....38564
20.....38564
22.....38564
24.....38564
25.....38564
27.....38564
52.....38564
53.....38564
54.....38564, 38832
63.....38564
64.....38564
68.....38564
73 .....38564, 39278, 40981
74.....38564
76.....38564
78.....38564
79.....38564
90.....38564
95.....38564
97.....38564
101.....38564
Ch. III.....42067

48 CFR

Ch. 1.....38238, 38250
2.....38238
7.....38238
18.....38247
34.....38238
52.....38238
Ch. 2.....39004
208.....39004
212.....39005
216.....39006
219.....39008
225 .....39004, 39005, 39008
239.....39009, 39010
252 .....39004, 39005, 39008, 39010
253.....39004
652.....41177
904.....40880
952.....40880

Proposed Rules:

2.....40681
7.....40681
12.....40681
25.....40681
52.....40681

49 CFR

574.....39233

Proposed Rules:

571.....40057

50 CFR

17.....40657
91.....39011
216.....40928
223.....38270
226.....38277
300.....38297, 38298
622.....38797, 41177
648 .....40027, 40436, 41738
660.....37839, 38111
679 .....38797, 39015, 40028, 40029, 40934, 40935, 40936, 41178, 41738, 42060, 42061
680 .....38112, 38298, 40030

Proposed Rules:

17 .....37881, 38593, 40588, 41410
32.....41864
300.....39642
648.....38352
679.....39046

REMINDERS

The items in this list were editorially compiled as an aid to Federal Register users. Inclusion or exclusion from this list has no legal significance.

RULES GOING INTO EFFECT JULY 25, 2006

AGRICULTURE DEPARTMENT

Agricultural Marketing Service

Egg Research and Promotion Program:

American Egg Board; State composition of geographic areas; amendment; published 7-24-06

CONSUMER PRODUCT SAFETY COMMISSION

Consumer Product Safety Act:

Substantial product hazard reports; published 7-25-06

HEALTH AND HUMAN SERVICES DEPARTMENT

Food and Drug Administration

Medical devices:

Center for Biologics Evaluation and Research and Center for Drug Evaluation and Research; address information; technical amendment; published 7-25-06

TRANSPORTATION DEPARTMENT

Federal Aviation Administration

Airworthiness directives:

Boeing; published 6-20-06

Empresa Brasileira de Aeronautica S.A. (EMBRAER); published 6-20-06

COMMENTS DUE NEXT WEEK

AGRICULTURE DEPARTMENT

Agricultural Marketing Service

National Organic Program:

Allowed and prohibited substances; national list; comments due by 8-2-06; published 7-3-06 [FR E6-10393]

AGRICULTURE DEPARTMENT

Animal and Plant Health Inspection Service

National Veterinary Accreditation Program; comments due by 7-31-06; published 6-1-06 [FR E6-08493]

AGRICULTURE DEPARTMENT

Commodity Credit Corporation

Loan and purchase programs:

Marketing assistance loans; grain security storage requirements; comments due by 8-2-06; published 7-3-06 [FR E6-10368]

COMMERCE DEPARTMENT

National Oceanic and Atmospheric Administration

Fishery conservation and management:

West Coast States and Western Pacific fisheries—

Pacific Coast groundfish; comments due by 8-2-06; published 7-3-06 [FR 06-05957]

ENERGY DEPARTMENT

Federal Energy Regulatory Commission

Natural gas companies (Natural Gas Act):

Energy Policy Act of 2005; implementation—

Natural gas project applications; coordination of Federal authorization processing and complete consolidated records maintenance; comments due by 7-31-06; published 5-30-06 [FR E6-08205]

ENVIRONMENTAL PROTECTION AGENCY

Air pollutants, hazardous; national emission standards:

Portland cement manufacturing industry; comments due by 8-1-06; published 7-18-06 [FR E6-11334]

Pesticides; tolerances in food, animal feeds, and raw agricultural commodities:

Ascorbic acid, etc.; comments due by 7-31-06; published 5-31-06 [FR E6-08249]

Inorganic bromide; comments due by 7-31-06; published 5-31-06 [FR E6-08398]

Sulfuryl fluoride; comments due by 8-4-06; published 7-5-06 [FR E6-10454]

Terbacil; comments due by 7-31-06; published 5-31-06 [FR E6-08275]

Zoxamide; comments due by 7-31-06; published 6-1-06 [FR E6-08395]

Toxic substances:

Polymer premanufacture notification exemption rule—

Perfluorinated polymers; exclusion; comments due by 7-31-06; published 5-30-06 [FR E6-08245]

FEDERAL COMMUNICATIONS COMMISSION

Radio stations; table of assignments:

Missouri; comments due by 7-31-06; published 6-28-06 [FR E6-10007]

HEALTH AND HUMAN SERVICES DEPARTMENT

Children and Families Administration

Head Start Program:

Transportation requirements; waivers; comments due by 7-31-06; published 5-30-06 [FR E6-08222]

HOMELAND SECURITY DEPARTMENT

Coast Guard

Ports and waterways safety; regulated navigation areas, safety zones, security zones, etc.:

East Rockaway Inlet to Atlantic Beach Bridge, Nassau County, Long Island, NY; comments due by 7-31-06; published 6-1-06 [FR 06-05032]

Regattas and marine parades:

Ocean City Maryland Offshore Challenge; comments due by 7-31-06; published 6-29-06 [FR E6-10251]

HOUSING AND URBAN DEVELOPMENT DEPARTMENT

Mortgage and loan insurance programs:

Accelerated claim and asset disposition program; comments due by 8-4-06; published 6-5-06 [FR E6-08637]

HOUSING AND URBAN DEVELOPMENT DEPARTMENT

Federal Housing Enterprise Oversight Office

Safety and soundness:

Record retention requirements; comments due by 7-31-06; published 6-1-06 [FR E6-08491]

PENSION BENEFIT GUARANTY CORPORATION

Single-employer plans:

Allocation of assets—

Benefits payable in terminated plans and interest assumptions for valuing and paying benefits; comments due by 8-1-06; published 7-14-06 [FR E6-11101]

PERSONNEL MANAGEMENT OFFICE

Classification under General Schedule and prevailing rates systems; classification and job grading appeals; obsolete references removed; comments due by 7-31-06; published 6-30-06 [FR 06-05891]

TRANSPORTATION DEPARTMENT

Federal Aviation Administration

Airworthiness directives:

Airbus; comments due by 7-31-06; published 6-30-06 [FR 06-05872]

BAE Systems (Operations) Ltd.; comments due by 8-2-06; published 7-3-06 [FR E6-10352]

Boeing; comments due by 7-31-06; published 7-6-06 [FR E6-10536]

Empresa Brasileira de Aeronautica S.A. (EMBRAER); comments due by 7-31-06; published 5-30-06 [FR 06-04909]

Fokker; comments due by 7-31-06; published 6-30-06 [FR 06-05873]

International Aero Engines; comments due by 8-1-06; published 6-2-06 [FR E6-08562]

Sikorsky; comments due by 7-31-06; published 5-31-06 [FR 06-04911]

Class E airspace; comments due by 7-31-06; published 6-14-06 [FR 06-05366]

VOR Federal airways; comments due by 7-31-06; published 6-16-06 [FR E6-09371]

TRANSPORTATION DEPARTMENT

Federal Highway Administration

Proposed highway projects; licenses, permits and approvals:

Ohio; comments due by 7-31-06; published 2-1-06 [FR E6-01312]

TRANSPORTATION DEPARTMENT

Federal Transit Administration

Transit operations; prohibited drug use and alcohol misuse prevention:

Safety-sensitive employees; controlled substances and

alcohol misuse testing; duplicative requirements elimination; comments due by 8-4-06; published 6-5-06 [FR 06-05073]

VETERANS AFFAIRS DEPARTMENT

Compensation, pension, burial and related benefits:

Benefits; bars, forfeiture, and renouncement; comments due by 7-31-06; published 5-31-06 [FR 06-04940]

LIST OF PUBLIC LAWS

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S. 3504/P.L. 109–242
Fetus Farming Prohibition Act of 2006 (July 19, 2006; 120 Stat. 570)
Last List July 14, 2006

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